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Appendix to the Journal of the Senate

LEGISLATURE OF THE STATE OF CALIFORNIA
1967 REGULAR SESSION

REPORTS

January 2, 1967—September 8, 1967

HON. ROBERT H. FINCH
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

J. A. BEEK
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SPECIAL REPORT OF THE

SENATE FACT FINDING COMMITTEE ON AGRICULTURE

Functioning Pursuant to Senate Standing Rule 12.5
of the 1966 Regular (Budget) Session

on

FARM LABOR DISPUTES

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Published by the
SENATE
OF THE STATE OF CALIFORNIA

1967

ROBERT H. FINCH
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary

California Legislature
Senate Fact Finding Committee on Agriculture

January 9, 1967

Hon. Robert H. Finch, *President*
and Members of the Senate

Gentlemen:

The Senate Fact Finding Committee on Agriculture, functioning pursuant to the provisions of Senate Standing Rule 12.5, transmits herewith a special report on farm labor disputes, together with the committee's findings and recommendations.

This report is based primarily upon the voluminous testimony presented to the committee at the comprehensive and in-depth hearings of the committee held during 1966 on the subject matter of SR 148, of the 1966 First Extraordinary Session, relating to farm labor disputes.

Respectfully submitted,

Vernon L. Sturgeon, *Chairman*

Robert J. Lagomarsino,
Vice Chairman
Hugh P. Donnelly
Aaron W. Quick
Joseph A. Rattigan
(with reservations)
Jack Schrade
Harold T. Sedgwick
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PREFACE

Beginning in September 1965, the small farming community of Delano, California, situated in the lower San Joaquin Valley, became the focal point of one of the most publicized labor disputes in California history.[1] The popularly referred to "grape strike" in Delano began when members of the Agricultural Workers Organizing Committee (AWOC) picketed workers in certain vineyards in the area beginning about September 8, 1965. These pickets were joined a week later by other pickets who were members of the National Farm Workers Association (NFWA).

Both AWOC and NFWA claimed to be representatives of the majority of the workers in the field and demanded that the employers of the area recognize them as such for the purpose of negotiating a union contract. Spokesmen for AWOC and NFWA demanded higher wages and better working conditions, but paramount among their demands was that of union recognition itself.

Singled out for concerted picketing and strike activity were the Sierra Vista Ranch near Delano, owned and operated by the Di Giorgio Corporation, and some 3,350 acres of vineyards owned by Schenley Industries, Inc. It was felt by union representatives that if these two concerns, as among the largest employers of farm labor in the area, were to recognize both the unions and their demands, other area employers would soon follow suit.

Subsequently, after nearly nine months of continued strife, Di Giorgio agreed to hold a representative election among its employees at Delano, as well as at its properties in Borrego Springs. Such an election was held on June 24, 1966. The outcome of this election, however, was disputed. In an effort to prevent further bitterness, the Governor on June 30 appointed Mr. Ronald W. Haughton of the American Arbitration Association to obtain "a fair and equitable resolution" of the matter.

The Governor was asked by the chairman of the Senate Fact Finding Committee on Agriculture not to take such action at that time until the Legislature had an opportunity to investigate the situation for itself. It is the feeling of this committee that such investigation is properly the responsibility of the legislative branch of government, rather than the executive.

Responding to a potential crisis in California agriculture, the California Legislature undertook to determine whether or not legislative action was needed in the area of farm labor disputes and if such action was feasible. Such a determination was assigned to the Senate Fact Finding Committee on Agriculture pursuant to Senate Resolution No. 148, 1966 First Extraordinary Session, which directs the committee to ". . . exhaustively review all existing state and federal legislation

[1] During the late summer and fall of 1965, the California Department of Employment investigated 34 alleged labor disputes in the Delano area. Bona fide labor disputes were found to exist in 31 cases.

in this area [of farm labor disputes], together with any constructive proposals which take cognizance of the unique problems attendant to the production, harvesting and processing of perishable farm commodities. . . .'' [2]

In accordance with the terms of SR 148, this committee held three days of public hearings in Delano on July 19, 20, and 21, 1966. Some 38 witnesses, representing all sides of the farm labor dispute controversy, offered testimony. All testimony, statements and supplemental material was accepted by the committee only under oath.

The committee also met in Sacramento on November 29, 1966, to conclude its consideration of SR 148 and to formulate findings and recommendations.

This report is written in an attempt to summarize the testimony together with outside sources and to detail any proposals which may be helpful in finding solutions to the very real and potentially costly problem of farm labor disputes in California.

[2] The full text of Senate Resolution No. 148 is quoted in the appendix.

FARM LABOR DISPUTES IN CALIFORNIA

"Conditions in agriculture are so different, as compared with the conditions in industry, that no union should be empowered to act as the exclusive bargaining agent of the workers employed by farmers." (Triggs, Matt, assistant legislative director, American Farm Bureau Federation, hearings before the Subcommittee on Migratory Labor of the Committee on Labor and Public Welfare, United States Senate, July 8, 1965, p. 95.)

"Congressman Hagan: Well, this is an economic issue, let's face it, and you are seeking a union shop, are you not? I mean, you want every grower you have a contract with to make dues checkoffs, and every worker that he has to belong to your union?

"Mr. Chavez: If possible; if we have enough strength to do that, we would want that; yes." (*Op. cit.* March 14, 1966, p. 379.)

The number of farm labor disputes in California, both alleged and bona fide, increased sharply in 1965 over the previous year. In 1964, according to the California Department of Employment, there were 10 bona fide labor disputes involving 633 workers. These figures increased in 1965, to 57 bona fide labor disputes involving 7,490 workers. The principal reason for the sharp rise was the concerted effort during 1965 by representatives of organized labor to gain union recognition for a large part of California's agricultural labor force. The Agricultural Workers Organizing Committee, AFL-CIO (AWOC), and the National Farm Workers Association (NFWA) were the principal organizing agencies.

Farmers and farm employers have historically contended that agriculture cannot be compared to other industry, insofar as any collective bargaining agreement is concerned. They feel that an activity such as farming where the entire year's income could be jeopardized by a strike at a crucial period such as harvest time should not be subject to the same statutes as the rest of industry.

Congress recognized this, they contend, when agriculture was specifically exempted from the National Labor Relations Act.

For these reasons the idea of a unionized farm labor force is anathema to the farmer and farm employer. Farmers and farm employer representatives have, therefore, defended this position by the following arguments:

(1) The extreme vulnerability of agriculture to strikes and other labor disputes because of the perishable nature of most farm products;

(2) The inability of the farmer to control the price he receives for his produce; and

(3) The economic inability of the farmer to increase wage rates, the only major cost factor within his unilateral control.

Organized labor, however, contends that significant differences between agriculture and other industry no longer exist, even if they once may have. For this reason agriculture must be included within the full scope of state and federal statutes which affect the area of labor-management relations.

Spokesmen for organized labor have long contended that agriculture should be included in the National Labor Relations Act or that a State Labor Relations Act including agriculture be enacted. They also want no infringements on the worker's right to organize and engage in collective bargaining in pursuit of economic and social self-betterment.

Against this background of diametrically opposing views emerge most farm labor disputes. The term "labor dispute" is not defined in any California statute. The Department of Employment has adopted a definition derived from the Federal Norris-La Guardia Act and the Federal National Labor Relations Act. This definition reads:

"The term 'labor dispute' includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee."[3]

According to Albert Tieburg, former Director of the California Department of Employment, ". . . there has sometimes been a misunderstanding by growers and others as to the definition of the term 'labor dispute' and the department's application of this definition. This misunderstanding often arises because of the fact that there has not always been an employer-employee relationship between the group seeking to negotiate on behalf of the workers and the farmer. Since the definition of a labor dispute does not require an employment relationship between the disputants, a labor dispute may take the form of so-called 'stranger picketing' or an 'organizational dispute' which occur where a union makes an effort to organize workers, none of whom have gone on strike. Under federal statutes such as the National Labor Relations Act, machinery has been set up in the area of industrial labor-management relations whereby an employer or a union may obtain an election by the employees as to whether or not they wish to be represented by a particular union; if the majority of the employees reject the union as their bargaining agent, then further concerted action by the union constitutes an unfair labor practice which may be enjoined by the employer.

"The California law is clear that an employer-employee relationship is not necessary in order for there to be a labor dispute. . . .

"Where a labor dispute is alleged to exist the burden of proof to establish the facts rests with the worker group and/or the union representing them and requires that they submit convincing evidence that a labor dispute does exist in fact and in law. Before the department can make a finding that a dispute exists it must be satisfied that the union or a group of workers has communicated a demand to an employer or his authorized representative concerning the terms and conditions of employment with that employer. The department must

[3] *Local Office Manual,* California Department of Employment, Section 1187.

determine whether the employer has rejected the demands or in some other way failed to meet or agree with the demands. Only then may the department hold that a controversy exists between the two parties. It is this 'controversy' which constitutes the labor dispute. The labor dispute is generally manifested by economic weapons employed by either party, such as a strike, picketing or a lockout; however, these weapons are merely indications of an existing dispute and are not the dispute itself." (Tieburg, Albert, Director, California Department of Employment, July 19, 1966, pp. 19–22.)*

The determination as to whether or not a labor dispute exists is important in that the Department of Employment may not refer workers to jobs under certain conditions if a dispute does exist. If, for example, jobs are vacant because of a strike, or if the filling of a job is a labor dispute issue, the department may not refer workers to those jobs. If neither of the above conditions apply, the Department may refer workers to jobs available where a labor dispute exists, provided they give written notice to the worker that a labor dispute exists.

Mr. Tieburg continues:

"Now, during the late summer and the fall of 1965, the department investigated 34 alleged labor disputes in the Delano area involving various grape growers and two unions, the Agricultural Workers Organizing Committee and the National Farm Workers Association. In 15 of these cases the investigation revealed that some employees had left their work because of the dispute, and the department was therefore prohibited by law from making any agricultural referrals to the jobs which were left vacant, or paying benefits to the workers who left their jobs for this reason. However, in 16 cases it was found that although there was a labor dispute, no workers had left because of it, and thus under the law the department could make referrals provided written notice of the dispute was given to the person referred. In the remaining three cases the department found that no valid labor dispute existed at all and that therefore referrals could be made and no notice of a labor dispute need be given to the person referred." (Tieburg, *op. cit.*, p. 23.)

The Department of Employment is in the unenviable position of having to maintain complete neutrality in the determination of farm labor disputes. Caught in the struggle between labor and management, the department inevitably will satisfy one side and dissatisfy the other no matter which way it rules.

OTHER GOVERNMENTAL AGENCIES INVOLVED IN FARM LABOR DISPUTES

The California Department of Employment is only one of the main governmental agencies involved in most farm labor disputes. The others are the United States Department of Labor, the California Division of Labor Law Enforcement, and the State Conciliation Service. The latter two agencies are contained within the California Department of Industrial Relations.

* Hereafter, all material used which appears in the committee's transcripts will be cited as to witness, date of testimony, and transcript page number, and will not be footnoted.

The State Division of Labor Law Enforcement, headed by the Labor Commissioner, is responsible for the enforcement of the Labor Code provisions. Primarily an investigative organization, its efforts in the past concerning farm labor disputes have been hampered by the fluidity of the seasonal farm labor force and by the fact that the charges and countercharges exchanged between labor contractors, farmers, workers and unions have usually precluded clear determination of the facts.

The State Conciliation Service, under the provisions of Section 65 of the Labor Code, may investigate and mediate labor disputes, provided any bona fide party to such dispute requests intervention. Its services may be proffered to both parties when work stoppage is threatened and neither party requests intervention. The State Conciliation Service is the sole state agency established to assist in the settlement of labor disputes and related problems.

Following is a brief summary of the mediation activities of the State Conciliation Service since early 1965:

"In May 1965, the Agricultural Workers Organizing Committee (AWOC) requested intervention in its recognition and wage strike against a group of grape growers in the Coachella Valley. Their nine-day strike of approximately 400 fieldworkers ended when a state conciliator helped a large grower and AWOC to reach an agreement on wages and grievances.

"In June 1965, AWOC requested intervention in a recognition and wage dispute with a group of tomato growers in the Imperial Valley and several tomato growers in San Diego County. AWOC also requested intervention in a recognition dispute with a grape grower and packer in the Coachella Valley.

"In September 1965, a proffer of mediation assistance was made to both sides following strikes by AWOC and the National Farm Workers Association against grape growers in the Delano area.

"In April 1966, Governor Brown directed the Conciliation Service to make itself available to conduct an election upon agreement of the interested parties, when the Di Giorgio Corporation, largest grower in the Delano area, made a bargaining proposal for a secret ballot election to determine union representation. The Governor also asked the service to communicate with other grape growers in the Delano area for the purpose of exploring possible interest in consent election procedures as a means of resolving the dispute.

"In June 1966, the Teamsters Union requested intervention in a recognition dispute at the Di Giorgio Corporation's farm in Borrego Springs in San Diego County." (Nicolopulos, Thomas, State Supervisor of Conciliation, July 19, 1966, pp. 51–53.)

The Conciliation Service's experience in the mediation of agricultural disputes was summarized as follows:

"1. At various times and places it has been possible to mediate wage and grievance disputes, but to a significantly lesser degree than labor disputes in industry and commerce.

"2. It has not been possible to mediate labor disputes where recognition of a union as bargaining representative has been a key issue.

"3. Although the Conciliation Service has conducted some consent representation elections in agricultural enterprises such as packing

sheds, dairy farms and seed nurseries, it has not conducted any elections involving agricultural fieldworkers." (Nicolopulos, *op. cit.*, p. 54.)

To further indicate the futility of the State Conciliation Service insofar as farm labor disputes are concerned, the following exchange is included:

"SENATOR COBEY: I gather from your conclusions that because of the entirely voluntary nature of the State Mediation Service function, that it has been, on the whole, over the last 20 years, it has been rather completely ineffective in agricultural labor disputes?

"MR. NICOLOPULOS: Yes, sir. I'm afraid I would have to say so." (July 19, 1966, p. 55.)

It has been demonstrated in the preceding testimony that the various state agencies involved with the mediation and settlement of farm labor disputes are, on the whole, ineffective, and/or dissatisfied with their position relative to the farm labor dispute issue.

FEDERAL MINIMUM WAGE

On September 23, 1966, the President signed into law a bill amending the Fair Labor Standards Act of 1938. This bill (P.L. 89-601) extends the benefits and protection of the act to an estimated 7.2 million workers, including some 390,000 agricultural employees. Agricultural employees, unless exempted by the act, are for the first time covered by minimum wage provisions.

Beginning February 1, 1967, 390,000 estimated farm workers will receive a guaranteed minimum of $1 per hour. The minimum will increase to $1.15 per hour on February 1, 1968, and further to $1.30 on February 1, 1969. Room, board, and other facilities customarily furnished employees by employers are "wages" according to their fair value or reasonable cost as provided for in Section 3(m) of the act. In the case of hand harvest workers paid on a piece-rate basis, the employer will be considered as complying with the act if the hourly average of the aggregate earnings of all such workers during any workweek exceeds the minimum hourly wage. In no event, however, may any individual worker be paid less than 75 percent of the applicable minimum wage.

Agricultural workers will remain exempt from the overtime provisions of the act. To be covered under minimum wage provsions an employee must be employed by an employer who used more than 500 man-days of agricultural labor in any calendar quarter of the preceding year. "Man-day" means any day during any portion of which an employee performs any agricultural labor. It is estimated that only one percent of all U.S. farms will be covered by the bill.

Three classes of employees are exempted from the provisions of the bill. These are as follows:

1. Any agricultural employee who is the parent, spouse, child, or other member of his employer's immediate family.

2. Any agricultural hand harvest laborer, paid on a piece-rate basis in an occupation customarily and regularly recognized as having been paid on a piece-rate basis in the area where the employee is employed, who commutes daily from his permanent residence to the farm on which

he is so employed, and who has been employed in agriculture less than 13 weeks during the preceding calendar year.

3. Any employee principally engaged in the range production of livestock.

The U.S. Department of Labor is charged with the enforcement of all provisions of the bill.

Even though the average California farm employee earns a wage substantially higher than the federal minimum, the effects of a federal minimum wage on California agriculture will be manifold.

California presently has a minimum wage of $1.30 per hour, enacted and enforced administratively, for women and children under 18 employed in agriculture. The latest estimates for all farm employees in California indicate an average wage of $1.40 per hour, substantially higher than the federal minimum wage.

The federal minimum wage, however, will exert an equalizing effect in the farm produce marketplace. Any improvement in the competitive position of California's growers will, in turn, increase their ability to improve the utilization of and pay to wage workers. Thus, the federal agricultural minimum wage will set in motion major forces to create a more efficient, dependable, and productive seasonal labor supply in California and furnish these workers a higher economic and social potential.

AGRICULTURE VIEWS FARM LABOR DISPUTE ISSUES

The farmer pits his experience, ingenuity, and financial resources against the forces of nature, society, and the economy. His goal is to raise and harvest a crop that will give him enough of a return on his investment so that, after meeting the necessary costs of production, he is able to plant and harvest another crop, in the meantime maintaining an adequate standard of living for himself and his family.

The farmer tends, therefore, to be an independent person. The historical resistance to the unionization of his labor is a direct manifestation of this independence. The farmer believes he is ". . . engaged in society's most useful and necessary enterprise, and [is] entitled to the special consideration which the dignity of his occupation commands. He regards himself as a natural agent of the forces of freedom. . . . He believes that he has a right as a farmer to an adequate supply of labor. Trade unions he regards as threats to the exercise of his basic rights." [4]

Thus, the farmer feels he should be left alone to decide what is best for himself and for those he employs. Organizational attempts by unions in the past have done little to change the farmer's viewpoint. Almost always, organized labor has chosen the harvest as the time to strike to accentuate its demands. Although most farm food crop operations cannot be delayed without loss, harvest time is the most crucial. By creating a dispute during the harvest period, the union assumes a very strong bargaining position. Such actions, however, are almost certain to completely alienate even the most worker-conscious and sympathetic farm employer. This is a major reason for the almost complete

[4] Fisher, Lloyd H., *The Harvest Labor Market in California*, Harvard University Press, Cambridge, Mass., 1953, p. 94.

lack of success by the unions in gaining recognition of the farmer. In most of the other industries they have attempted to organize, labor unions have found employers who, although not cheerful about the idea, have nevertheless been willing to sit down and negotiate with union representatives. For all practical purposes, this type of employer is nearly nonexistent in California agriculture.

ORGANIZED LABOR'S VIEWS OF FARM LABOR DISPUTE ISSUES

Organized labor is a powerful force in the economy of this nation. Since the monumental labor disputes of the 1930's, labor has been successful in organizing a large part of the industrial labor force. Unions point with justifiable pride to their success in obtaining for their members higher wages, shorter hours, pension and retirement plans, and numerous other benefits which insure security.

Attempts to organize the agricultural labor force, however, are notable for their singular lack of success. Organized labor has run head on into an employer resistance in the field of agricultural labor that is reminiscent of the 1920's and 30's. It is organized labor's contention that this resistance must be overcome; that reasons for it no longer exist, if indeed they once did. Collective bargaining, labor claims, can be applied to agriculture without the disaster predicted by the growers.

"It is our view that collective bargaining is flexible and dynamic enough to adapt itself to the situation in agriculture without losing its fundamental coloration." (Peevey, Michael, Director of Research, California State Federation of Labor, July 20, 1966, p. 192).

While the agricultural worker's right to organize is clear under both federal and California law,[5] there is no legal machinery available to these workers to force growers to recognize such an organization. Organized labor's primary contention is that this be changed. The agricultural employee should be brought into coverage under the National Labor Relations Act or under any similar law enacted on the state level.

"Farm workers are pursuing their right to organize for collective bargaining purposes. The crucial question is, are they going to do so within the framework of a system that provides an orderly, logical and reasonable means of demonstrating their organizing desire or are they going to be forced to demonstrate their determination by direct action that, of necessity, means interruption of the agricultural process? As a society we must ask ourselves are we going to encourage agricultural stability and cooperation among grower and worker or are we going to continue to encourage conflict and strife by allowing the 'law of the jungle' to prevail as it did in other segments of the American economy prior to enactment of the Wagner Act in the 1930's?" (Peevey, *op. cit.*, p. 194.)

Organized labor also contends that both workers and employers would benefit from a strong collective bargaining agreement; greater

[5] See Legislative Counsel's Opinion No. 7403, which is reproduced in the Appendix, marked Exhibit No. 3.

sales would benefit the grower and higher wages and better working conditions would benefit the worker.

It is clear, however, that while both employer groups and organized labor are not satisfied with the present status of labor-management relations, neither side is yet willing to concede what it feels to be a prerogative. With this type of thinking so prevalent, the Legislature is hard put to arrive at any kind of solution without gravely offending one side and possibly both.

SPECIFIC PROPOSALS FOR SETTLEMENT OF FARM LABOR DISPUTES

During the course of its hearings, the committee received several specific proposals, from both the growers and organized labor. In the opinion of the proponents, the following proposals would be beneficial in the settlement or elimination of farm labor disputes:

A. The enactment of a State Labor Relations Act to include agriculture and define unfair labor practices.

This proposal has long been the mainstay of organized labor. There seems to be a desire at this time, at least from some growers, for such an act.[6]

B. Legislation to prevent agricultural workers from striking at harvest time.

This proposal is strongly advocated by the growers as protection against the strongest economic weapon held by the unions. Growers also point out that a strike at any time during the year, due to the fact that certain cultural practices must be followed lest serious crop damage result, would create adverse economic consequences.

C. Union contracts with a no-strike proposal, plus a surety bond.

This proposal would entail the writing of a contract to contain a no-strike clause either for the life of the contract or at certain specified periods. The union would post a bond which would be commensurate with potential damages in the event of an illegal strike.

D. An arbitration board composed jointly of Members of the Legislature, a representative appointed by the Governor, and representatives of both labor and the growers. Work would continue during the board's arbitration and its findings would be final and binding on all parties concerned.

This proposal by the State Grange is, in effect, compulsory arbitration, which has never been very effective in labor-management relations.

E. A system of unemployment insurance for farm workers giving "due consideration to the typical pattern of peaks and valleys of employment on the farm in relation to both the duration and amount of benefits and the required contribution of the farm employer under any actuarial system of insurance." (Hagen, Harlan, Member of Congress, 18th District (California), *op. cit.*, July 19, 1966, pp. 69–70.)

[6] Di Giorgio, Robert, Di Giorgio Corporation, July 20, 1966, p. 281.

F. A statewide election to be held for all farm workers whereby they would determine by secret ballot whether or not they want to be represented by a union, and if so, what union.

Other proposals and suggestions have been made by persons who did not testify during the hearings. Several of these, the committee feels, are worthy of mention.

The president of the California Farm Bureau Federation, Mr. Allen Grant, believes "it is highly unlikely that more than a small percentage of California's 85,000 farms will be unionized." In this event he proposes that California farmers ". . . move ahead to do those things which they have done in the past to upgrade working conditions on a continuing basis. It will be necessary to employ more women. An increased program of youth employment during the summer will be a must. Management and supervisory personnel training courses will have to be increased. Fringe benefits presently made available by many farmers will have to be seriously considered by all farmers. There will have to be self-policing to see that all the laws presently relating to farm labor are implemented. Finally, knowing that industry-type collective bargaining is impossible for agriculture, *some type of mediation or concilation service must be considered in lieu of the National Labor Relations Act.*

"Workers have a right to organize, just as farmers have a right to be members of the Farm Bureau. No one forced us to join Farm Bureau and no one should force a worker to join a union. The traditional employer-employee relationship on the farm has been a satisfying one for both parties. I am sure that California farmers will continue to improve conditions without the entrance of a third party into the business of farming." [7] (Emphasis added.)

Further suggestions, similar to those of Mr. Grant's, together with some specific proposals were offered to this committee by Mr. Homer Martin, secretary of the Tulare-Kings Employers Council.

Mr. Martin is also reluctant to have enacted a state labor relations act which includes agriculture. He suggests that corrective legislation would be, in his opinion, desirable in certain other areas. He feels that ". . . the larger corporation farms should be brought under the jurisdiction of the State Conciliation Service in the same fashion that California transit authorities are now covered." [8]

Mr. Martin's own opinion is ". . . that such power (by the Conciliation Service) should cover only employers who employ at least 25 employees measured on an hourly basis equivalent of one year's employment."

A second proposal by Mr. Martin is that of the ". . . prohibition of picketing of any employer or the institution of boycotts by any union which cannot or will not prove a majority representation of employees in a secret ballot election conducted either by the State Conciliation Service or by responsible private authorities.

"Both publicity picketing and secondary boycott picketing or incitement to boycott should be prohibited where the purpose of such picketing is to force employers to sign a contract or force his employees to

[7] *California Farm Bureau Monthly*, Vol. 47, No. 10, October 1966, p. 6.
[8] For example, see *California Public Utilities Code*, Sections 30751 and 90300, par. (c).

join a union against their will. Coercion of employees by such means is immoral and should be made unlawful by appropriate legislation.

"The right of employees 'to self-organization, to form, join or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection' is a basic right that cannot be violated without adversely affecting the individual freedom of all citizens. However, the right to act affirmatively must carry with it 'the right to refrain from any or all such activities.' If, therefore, employees are open to coercion, restraint and intimidation by any person, persons or organizations by any means, then this basic right is meaningless. Such coercion should be prohibited by law, and injunctive relief should be available through a court of competent jurisdiction. Any organization, committee or person engaging in such activity should be compelled to prove that they, indeed, represent a majority of such employees by a secret ballot election."

Mr. Martin J. Zaninovich, president of the board of directors of the South Central Farmers Committee, in a letter dated July 29, 1966, informs the committee that it is his feeling, ". . . that the most important, single problem of farm labor involves the migrant labor force, and has to do with the lack of continuity of employment." He also feels that, ". . . proper statistical information relative to the actual makeup of the farm labor force seems to be lacking at present, along with a great deal of other pertinent information."

Mr. Zaninovich suggests, ". . . that further hearings on this subject [of farm labor disputes] be devoted to exploration in detail on the matters set forth above. Further, that if such explorations reveal a serious shortage of precise definitions of both problems and solutions, then your committee would be well advised to recommend the nature and extent of further investigation by the next Legislature."

RECENT CALIFORNIA LEGISLATIVE HISTORY

The California Legislature, mindful of its duties to all the citizens of the state, has in recent years been engaged in a study of the farm labor problem in California. At each general session of the Legislature since 1959, a major piece of legislation has been introduced in an attempt to resolve the conflicts of labor disputes in general, and farm labor disputes in particular. None of this legislation, for various reasons, has been enacted.

Detailed below are brief summaries of such legislation, together with the disposition:

In 1959, the administration caused a bill to be introduced which would have created a Division of Labor-Management Relations within the Department of Industrial Relations. The bill (AB 419) passed the Assembly but died in the Senate Committee on Labor.

Under the provisions of AB 419, a Division of Labor-Management Relations would have been created. Chapter 8, Section 163, of the bill provided:

[9] This committee is cognizant of the fact that the Assembly Interim Committee on Agriculture is about to complete a comprehensive study of the makeup of California's migrant labor force, together with a statistical survey. Their findings should be published in the near future.

"The division may investigate and mediate labor disputes providing any bona fide party to such dispute requests intervention by the division and the division may proffer its services to both parties when work stoppage is threatened and neither party requests intervention. In the interest of preventing labor disputes the division shall endeavor to promote sound union-employer relationships. The division may arbitrate or arrange for the selection of boards of arbitration on such terms as all of the bona fide parties to such dispute may agree upon. Records of the division relating to labor disputes are confidential; provided, however, that any decision or award arising out of arbitration proceedings shall be a public record."

The bill was clearly intended to bring agricultural workers and employers under its provisions.

At the 1961 General Session, a bill (AB 406) was introduced which related to jurisdictional strikes and labor organization representation. Under the provisions of this bill the jurisdictional strike provisions of the Labor Code would have been repealed. Workers, including agricultural workers, would have been given the specific right to select a collective bargaining representative by majority vote. It further provided that upon a petition filed by a labor organization the Department of Industrial Relations, after investigation, was empowered to conduct elections and certify the labor organization receiving the majority of votes as the collective bargaining representative of the workers in the appropriate unit.

Another provision was that workers in a unit where concerted activity arose out of a labor dispute may vote, but their replacements could not. Also, the department could not consider a petition for a new election for a year after certification, or for two years if a collective bargaining agreement was in effect. The department was given exclusive jurisdiction and enforcement powers. Judicial review was guaranteed.

The same bill, only without the repeal of jurisdictional strike provisions, was introduced again at the 1963 General Session (SB 811). Both the 1961 and 1963 bills died in committee in the house of origin.

At the General Session in 1965, AB 2483 was introduced, which proposed the creation of a State Labor Relations Board. Under the provisions of this bill, the board would be contained within the Department of Industrial Relations. Composed of three members appointed by the Governor, the board would have had the power to authorize and regulate union elections and to prevent any employer from engaging in unfair labor practices, which were also defined in the bill. The bill further established procedures for enforcement proceedings and elections authorized, including judicial review. Agricultural workers would have been included.

This bill was assigned to the Assembly Rules Committee for assignment to an appropriate interim committee for further study.

Thus, we have seen that the Legislature has in recent years attempted to solve, at least in part, the thorny problem of farm labor disputes. To date, however, these efforts have been in vain. The reasons for this inaction have been briefly touched on before. These include the unwillingness of either side in the farm labor dispute issue to make even

the smallest concession, and the inability of the Legislature to take a firm stand in the absence of a consensus. As long as these forces maintain predominance, the "law of the jungle" will continue.

There seems little doubt that "such promise of improvement as does exist, rests with longer periods and more general economic processes. There is perhaps more hope to be found in the dwindling of the agricultural labor force as farm mechanization makes giant strides and as the proportion and number of agricultural workers in the labor force continues its long-time secular decline, than in any program for the reform of the agricultural labor market. . . . Obviously, in the meantime, wherever opportunities for improvement present themselves, they should be seized. Whatever the limits of tolerance for reform, they should be exploited to the full. Secular processes take a long time." [10]

It should be pointed out, however, that specific legislation has been passed that will help alleviate some general farm labor problems.

In the field of education, the children of migratory workers will be greatly affected by the provisions of SB 88, 1966 First Extraordinary Session. This bill appropriates $500,000 to be apportioned to school districts which are impacted by influxes of large numbers of seasonal workers, the money to be used to provide educational services for many children who live in environments of "cultural and economic disadvantage or poverty." It also provides that nothing in the act shall be construed to maintain or promote social, ethnic or economic segregation of pupils.

The Legislature passed in 1965 SB 899, which provides for sanitary facilities for harvesting operations. This act requires that such facilities must be provided by the employer and directs employees to use the facilities.

Also passed in 1965 was AB 2426, a bill which amended the Fair Employment Practice Act to eliminate the exclusion from the act of agricultural workers residing on the land where they are employed as farm workers.

These are just a few examples of specific legislation passed in the area of farm labor problems.

It should also be noted that in 1961 the Senate Fact Finding Committee on Labor and Welfare published a comprehensive report entitled *California's Farm Labor Problems*. This report, printed in two parts, is a most useful reference for anyone wishing to study farm labor problems in detail.

FARM LABOR LEGISLATION IN OTHER STATES

California is not alone in its efforts to find some solution to the problem of farm labor disputes. Although this problem is magnified by the size of California's share of the agricultural market, many other states have enacted statutes which attempt to deal with farm labor problems.

In general most of these statutes are similar to those which presently exist in California. These include minimum wage laws and regulations, prohibitions on the use of child labor, prohibitions on discrimination in employment because of race, creed, color, or national origin. Some 22 jurisdictions have workmen's compensation laws that specifically

[10] Fisher, *op. cit.*, p. 148.

cover farm workers, although in varying degrees. California, four other states, and Puerto Rico provide coverage for all farm workers. Only five states have no provision for coverage. Of the 39 minimum wage laws only those of Hawaii and Puerto Rico specifically apply to agricultural workers, both men and women. Nine other laws, including California's, are broad enough to cover agriculture. They do not set minimum wage rates in the law, but provide for setting such rates by administrative order, and apply to women and minors only.

STATE LABOR RELATIONS ACTS

Fourteen states have labor relations acts which recognize the right of employees to organize and to bargain collectively. Only those of Kansas, Puerto Rico, and Wisconsin appear broad enough to cover all agricultural workers. Hawaii exempts workers engaged in the feeding of and milking of cows. The remaining 10 laws specifically exempt agricultural workers from coverage.

In those states and territories which have labor relations acts, only Hawaii and Puerto Rico cover agricultural workers under unemployment insurance laws.

No state prohibits strikes by agricultural workers by law, but it is understood several states have laws which either require a 10-day strike notice, or require that certain other criteria be met prior to calling a strike.

All states offer conciliation services if requested by either of the disputing parties. In the case of Puerto Rico, Hawaii, Kansas, and Wisconsin, these services are compulsory.[11]

MEDIATION AND NEGOTIATION PROVISIONS IN FOREIGN JURISDICTIONS

It is known that in the Netherlands bilateral determinations are made with the three leading agricultural workers' unions and their employer counterpart organizations participating under law. The extent and detailed subject matter of these joint determinations and their application under law are not known.

Similarly, in Sweden the Landworkers' Union negotiates elaborate contracts covering wages, overtime, etc., with a national farm employer association. It is believed these negotiations are conducted under government auspices.

In Great Britain, which has a long history of organization of farm labor, each county has an established joint board which sets the hours and wages of agricultural labor, and the recognized and accredited representatives of farm labor present their case to them. It is understood the achievements of this organization of farm labor in Great Britain can be measured in legislation enacted which presumably meets their needs but the exact details of such legislation are not avilable to us.

In the case of Australia, the laws which establish the manner of wage determination and require worker representation cover the pastoral industry only to a limited extent.

[11] U.S. Department of Labor, Bureau of Labor Standards, *Status of Agricultural Workers Under State and Federal Labor Laws*, Fact Sheet No. 2, December 1965.

New Zealand has had a collective bargaining law since before the turn of the century, but it was not until 1936 that the coverage of agricultural workers was considered feasible and in the national interest with the passage of Agricultural Workers Act. The act provides for a joint employer organization-workers union to participate in acceptance of government proposals on wages and conditions and for the resolution of differences or disagreements by a court of arbitration.

USE OF THE SUBPOENA AS A LEGISLATIVE TOOL

In order to obtain complete and accurate information during the course of a legislative investigation, either for pending or proposed legislation, committees may sometimes resort to the use of the subpoena as a means of making certain that such information is made available. Section 9401 of the Government Code states that

> "A subpena requiring the attendance of any witness before the Senate, Assembly, or a committee may be issued by the President of the Senate, Speaker of the House, or the chairman of any committee before whom the attendance of the witness is desired."

A subpoena should carry with it no stigma, since friendly witnesses as well as those who are hostile are often served.

Failure to respond to a subpoena, however, is a serious matter. Section 9405 of the Government Code states that

> "If any witness neglects or refuses to obey a subpena, or appearing, neglects or refuses to testify, or to produce upon reasonable notice any material and proper books, papers or documents in his possession or under his control, he has committed a contempt."

This committee, in the course of its investigation into farm labor disputes, found cause to issue four subpoenas. Three of these were actually served, thereby obligating those so served to appear before the committee in open hearing and offer testimony. One witness, for reasons not entirely clear to the committee, was served at his own request. Another subpoena was issued and served to Mr. Albert J. Lima, chairman of the Communist Party of Northern California. Mr. Lima appeared before the committee as requested, but refused to answer any questions after delivering a prepared statement. A third witness, Mr. Saul Alinsky, executive director of the Industrial Areas Foundation, Chicago, Illinois, for whom a subpoena was issued but not served, appeared and testified voluntarily. The fourth subpoena was issued and served to Brother Timothy, vice president and cellarmaster of Mont La Salle Vineyards, producers of Christian Brothers wines. Brother Timothy, acting on advice of counsel, ignored the subpoena, and failed to present himself as a witness. Counsel for Brother Timothy contended that since his (Brother Timothy's) principal duties had nothing to do with labor-management relations, he could be of no assistance to the committee in relation to its investigation as described in the text of Senate Resolution No. 148.

Subsequently, on July 20, 1966, in open hearing, the committee voted affirmatively on a motion by Senator Cobey to defer action on whether or not to cite Brother Timothy for contempt for his refusal

to appear as subpoenaed.[12] A second motion was made by Senator Cobey that Christian Brothers be requested to furnish a witness to testify to questions that would be propounded by the committee. This motion also received affirmative action.[13]

This committee wishes to make quite clear that it considers the failure to respond to a subpoena, for reasons however well-intentioned, a very serious matter and will not be tolerated. The committee feels it is competent to judge whether or not the testimony of a witness holds specific value.

As used by the Legislature, the subpoena is not a club, but rather a tool to be used in an attempt to gather all the facts and evidence it feels necessary in order for it to make an accurate and useful determination of a specific problem.

John W. Broad, attorney for Mont La Salle Vineyards, a California corporation engaged in the business of growing the grapes from which Christian Brothers wines and brandies are made, testified voluntarily at the committee meeting held on November 29, 1966, in Sacramento. At that point the chair, hearing no objections, ruled that Mr. Broad's testimony satisfied the objective of the subpoena initially served on Brother Timothy and that the matter was closed.[14]

[12] Transcript of committee hearings, July 20, 1966, p. 253.
[13] *Ibid.*, p. 254.
[14] Transcript of committee hearing, November 29, 1966, p. 3.

COMMITTEE FINDINGS AND RECOMMENDATIONS

This committee finds that there exists a very real problem in communications between employers and employees in agriculture in the areas of union recognition, hours, wages, and working conditions.

The lack of communication has resulted in strikes which have been extremely costly, not only to the parties involved but also to the consuming public. And, if allowed to continue, will have disastrous repercussions on the entire economy of the state.

This committee also feels very strongly that the problem of labor-management relations in agriculture has been studied almost to the point of absurdity. Further study means additional delay. The time is here for the development of constructive legislation in this area.

The committee recognizes that under California law it is declared public policy that the individual workman has full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

The committee further recognizes that, while this is declared public policy, no machinery exists to implement or to make this public policy a reality for agricultural employees.

At the same time, the committee recognizes that the farmer cannot set the price of his products on the market, nor can he control his production on a day-to-day basis. Neither can he, because of the perishable nature of his product, be said to possess equal bargaining power, particularly at harvest time.

The committee is also cognizant of the fact that the perishable nature of farm products makes utilization of existing machinery for the resolution of labor disputes impractical.

For these reasons, the committee makes the following recommendations:

1. The establishment within the framework of the State Department of Agriculture of a conciliation and mediation service which will endeavor to resolve agricultural labor disputes.

Such a service could be patterned after Governor Reagan's proposal for a tripartite mediation and conciliation service. The committee feels that there is merit in such a proposal. However, the committee feels that such a service would function more effectively with a membership of five or seven members, to be appointed by the Governor. This service would be composed of representatives of employer groups, employee groups, and the public at large.

Such a service should absorb those functions relating to the settlement of farm labor disputes, now the responsibility of the State Conciliation Service. Officials of that service have frankly admitted that the service has been almost totally ineffective in handling farm labor disputes.

Provision should also be made to require parties to a dispute to use the Agricultural Mediation and Conciliation Service, although the service's findings should not be mandatory.

The service should be adequately staffed to enable it to carry out its functions.

2. The committee also recommends that additional legislation be enacted to provide that any contract entered into between employers and employees contain a "no strike at harvest or other critical time" provision. Such a provision is essential, the committee feels, in order to protect the industry from irrevocable losses.

3. A possible alternative to this proposal would be to require that a 30 or 60-day notice of intention to strike be given an employer by the employee group. The intervening period could then be used to submit the dispute to the mediation and conciliation service.

4. The committee also recommends that the secret ballot be mandatory in any representative election.

The committee further recommends that at such time as a bargaining agent is selected and accepted by the employer, a period of at least one year shall elapse before a succeeding representation election can be held. Any contract entered into in good faith shall remain in effect during this period of time.

EXHIBIT No. 1

List of Witnesses, Delano, California

Tuesday, July 19, 1966

Joe Hochschild, Mayor of Delano
Albert Tieburg, Administrator of the Employment Relations Agency and Director of the Department of Employment
Sigmund Arywitz, Labor Commissioner of California
Thomas Nicolopulos, State Supervisor of Conciliation
Albert J. Lima, Chairman of the Communist Party of Northern California
Thomas Harris, Representing California Teamsters Legislative Council
Shirley Fetalvero, Tulare Independent Farm Workers
William Mookini, Tulare Independent Farm Workers
Ted Ramos, Tulare Independent Farm Workers
Kenneth C. Robertson, Representing Secretary of Labor W. Willard Wirtz
Donald D. Connors, Representing Di Giorgio Corporation
Paul Schrade, Director, Western Division, United Auto Workers

Wednesday, July 20, 1966

Michael Peevey, Director of Research, California State Federation of Labor
Oma Lee Olivera (Mrs.), Independent Farm Workers
J. B. Quinn, Master of the California State Grange
Einar Mohn, International Director, Western Conference of Teamsters
Robert Di Giorgio, Di Giorgio Corporation
Richard Myer, Personnel Director, Di Giorgio Corporation
James E. Woolsey, Vice President, Schenley Industries
Gerald Dodd, Sheriff-Sergeant, County of Kern

Thursday, July 21, 1966

Father Roger Mahony, Diocese of Monterey-Fresno
Bruno Dispoto, Owner, Bruno Dispoto Company
Dudley Steele, Co-owner, D. M. Steele & Son
Mitchell Videck, Deputy Sheriff, Tulare County
Edward Quevedo, State President, Mexican-American Political Association
Cesar Chavez, General Director, National Farm Workers Association
Rev. James Drake, California Migrant Ministry
Alexander Hoffman, Attorney, National Farm Workers Association
Dolores Huerta, National Farm Workers Association
Bishop Hugh Donohoe, Diocese of Stockton
Dr. Julian Nava, Teacher
Jack Pandol, Farmer

Dr. Floyd Reed, Pastor, First Baptist Church, Delano
Rev. Wayne C. Hartmire, Jr., Presbyterian Clergyman
Rev. R. B. Moore, Pastor, St. Paul Baptist Church, Delano
John Mulligan, Chairman, Citizens for Facts from Delano
Harold Marshall, Marshall's Prescription Pharmacy, Delano

List of Witnesses, Sacramento, California

Tuesday, November 29, 1966

John W. Broad, Attorney at Law, San Francisco, representing Christian Brothers' Mont La Salle Vineyard
J. J. Miller, Executive Vice President, Agricultural Producers Labor Committee
Louis Berman, representing the Agricultural Labor Support Committee of San Francisco
Kennth Blum, Student Committee on Agricultural Labor, University of California
Mike Gilliland, Boycott Director, East Bay Area, United Farm Workers Organizing Committee, AFL-CIO
Mrs. Anne Draper, Secretary of Citizens for Farm Labor
Robert Hanley, California Farm Bureau Federation

EXHIBIT No. 2

SECOND READING OF SENATE BILLS

Senate Resolution No. 148—Relating to farm labor disputes.

Resolution read second time.

Consideration of Committee Amendments

The following amendments were proposed by the Committee on Agriculture:

Amendment No. 1

In line 5 of the first WHEREAS clause, of the printed measure as printed on pages 631 and 632 of the Senate Journal for May 5, 1966, strike out the second "or".

Amendment No. 2

In line 2 of the second WHEREAS clause, strike out "the need still exists", and insert "a need may exist".

Amendment No. 3

In lines 2 and 3 of the second WHEREAS clause, strike out "or stabilization committee", and insert ", concilation service, stabilization committee, or such related devices".

Amendments read, and adopted.

Amended Senate Resolution No. 148

Relating to farm labor disputes

WHEREAS, Under California law it is declared public policy that the individual workman has full freedom of association, self-organization and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; and

WHEREAS, While some machinery exists for the resolution of farm labor disputes, it is apparent a need may exist for an effective arbitration service, conciliation service, stabilization committee, or such related devices which would possess the facility to act promptly and in a judicious manner so that costly farm labor disputes may be brought to a swift and amiable conclusion; and

WHEREAS, The farmer cannot set the price of his product on the market nor can he control his production on a day by day basis; neither can he, because of the perishable nature of the product, be said to possess equal bargaining power; and

WHEREAS, Unless some type of just, equitable and workable approach can be devised to resolve bona fide farm labor disputes, the state's economy will be in jeopardy and all parties to the dispute, including the consuming public, will experience losses which can never be regained; now, therefore, be it

Resolved by the Senate of the State of California, That the Senate Committee on Rules is requested to assign to an appropriate interim committee for study the subject of farm labor disputes and direct such interim committee to exhaustively review all existing state and federal legislation in this area together with any other constructive proposals which take cognizance of the unique problems attendant to the production, harvesting and processing of perishable farm commodities; and be it further

Resolved, That such interim committee is directed to report its findings, conclusions, and recommendations to the Senate on or before the 15th legislative day of the 1967 Regular Session of the Legislature.

Amended resolution ordered printed, and re-referred to Rules Committee for interim study.

EXHIBIT No. 3

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
Sacramento, California, July 11, 1966

HON. VERNON L. STURGEON
Senate Chamber

ORGANIZATIONAL ACTIVITIES OF AGRICULTURAL WORKER LABOR UNIONS—#7403

Dear Senator Sturgeon:

QUESTION

You have asked what are the rights of agricultural workers to organize labor unions under federal and state law, and what, if any, procedure is provided by law for determining employee representation in cases of organizational attempts.

OPINION AND ANALYSIS

1. RIGHT TO ORGANIZE.

a. *Federal law.*

With regard to the federal law, Section 7 of the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947 (29 U.S.C.A. 151 et seq.), guarantees employees the right ". . . to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ." (29 U.S.CA. 157). It is clear, however, that the agricultural workers do not come within the provisions of the National Labor Relations Act. Section 2 of the act (29 U.S.C.A. 152) specifies in subdivision 3 that the term "employee" does not "include any individual employed as an agricultural laborer."

It is also clear, however, that the exclusion of agricultural workers from the provisions of the National Labor Relations Act does not prevent such workers from organizing, since it has been held that employees have the right to organize in the absence of the act. In *National Maritime Union v. Herzog,* 78 Fed. Supp. 146, Affirmed 92 L. ed. 1776, the court stated, at page 155:

> "Quite apart from any statutory provision, employees have always had the right to organize trade unions, and through them to bargain collectively with employers concerning wages, hours, working conditions, or any other appropriate subject." (See also *United Electrical Workers v. Wisconsin Employment Relations Board,* 295 N.W. 791, affirmed 86 L. ed. 1154.)

b. *California law.*

With regard to California law, the only provisions which appear to have any bearing on the question of whether agricultural workers may organize are Sections 921 and 923 of the Labor Code. Section 921 provides that every promise made between any employee and his employer as to joining, remaining in, or withdrawing from a labor organization is contrary to public policy and such promise shall afford no basis of relief for the breach of such promise.

Section 923 reads in part:

> ". . . the public policy of this State is declared as follows:
> ". . . In dealing with such employers, the individual unorganized worker is helpless. . . . Therefore it is necessary that the individual workman have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection."

It has been uniformly held by the courts of this state that in enacting these sections, the Legislature evidenced the existence of a policy to uphold the freedom of employees to organize and to enter into collective bargaining contracts for their own protection and to outlaw the type of contract which deprives workmen of the right of free collective bargaining (*Elsis v. Evans,* 157 Cal. App. 2d 399; *Chavez v. Sargent,* 52 Cal. 2d 162).

Although we have found no decision in the California courts specifically discussing the application of these sections to agricultural workers, the language of the sections is clearly broad enough to include agricultural workers. We are therefore of the opinion that agricultural workers have the right under present California law to organize.

2. Procedure.

a. *Federal law.*

While the National Labor Relations Act, as amended, contains detailed procedure for the determination of employee representation in

cases of organizational attempts (see Sec. 9 of the act (29 U.S.C.A. 159)), as already pointed out, this act does not apply to individuals employed as agricultural laborers.

b. *California law.*

There is no California law providing procedure for determining employee representation. While bills have been introduced in the past to provide such a procedure (e.g., see A.B. 419, 1959 Reg. Sess.; A.B. 406, 1961 Reg. Sess.; S.B. 811, 1963 Reg. Sess.; A.B. 2483, 1965 Reg. Sess.), none of these bills has been enacted into law.

Very truly yours,

GEORGE H. MURPHY
Legislative Counsel

By Ray H. Whitaker
Principal Deputy

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Third Progress Report of the

SENATE FACT FINDING COMMITTEE ON AGRICULTURE

Functioning Pursuant to Senate Standing Rule 12.5 of the 1965 Regular Session

1965–1967

Members of the Committee

Vernon L. Sturgeon, *Chairman* *

Robert J. Lagomarsino, *Vice Chairman*
James A. Cobey *
Hugh P. Donnelly *
Virgil O'Sullivan *
Aaron W. Quick *
Joseph A. Rattigan *
Jack Schrade
Harold T. Sedgwick *
Walter W. Stiern
William Symons, Jr.*
Howard Way
Robert D. Williams *

* Term expired.

Paul K. Huff, *Consultant*



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OF THE STATE OF CALIFORNIA

1967

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California Legislature

Senate Fact Finding Committee

on

Agriculture

VERNON L. STURGEON
Chairman

LETTER OF TRANSMITTAL

January 31, 1967

HON. ROBERT H. FINCH, *President*
and Members of the Senate

Gentlemen: Submitted herewith is the Third Progress Report of the Senate Fact Finding Committee on Agriculture, functioning pursuant to Senate Standing Rule 12.5.

This report is a résumé of the activities of the committee, together with its findings and recommendations relative to the various items considered during the 1965–67 interim period.

Respectfully submitted,

VERNON L. STURGEON, *Chairman* *
ROBERT J. LAGOMARSINO, *Vice Chairman*
JACK SCHRADE
WALTER W. STIERN
HOWARD WAY

* Term expired 12-31-66.

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Chapter 1

INTRODUCTION

Chapter I

INTRODUCTION

This is the Third Progress Report of the Senate Fact Finding Committee on Agriculture. The First Progress Report covering the 1959–61 interim period was submitted to the Senate on January 2, 1961. The Second Progress Report covering the 1961–63 period was submitted to the Senate on February 7, 1963. For the 1963–65 interim period no progress report was compiled. However, four separate reports were submitted to the Senate as follows:

Capital Outlay Report—1964
Capital Outlay Report—1965
Report on Pesticides—1965
Report on Survey Bureau of Livestock Identification, State Department of Agriculture—1965 (Contract Study)

This report, like previous progress reports, is a résumé of the activities of the committee, together with the committee's findings and recommendations relative to the various items studied by the committee during the 1965–67 interim period.

On July 13, 1965, the committee was appointed by the Senate Rules Committee and has been functioning pursuant to the provisions of Senate Standing Rule 12.5. Serving on the committee were the following members:

Vernon L. Sturgeon,
Chairman
Robert J. Lagomarsino
James A. Cobey
Hugh P. Donnelly
Virgil O'Sullivan
Aaron W. Quick
Joseph A. Rattigan
Jack Schrade
Harold T. Sedgwick
Walter W. Stiern
William Symons, Jr.
Howard Way
Robert D. Williams

On September 22, 1965, Senator Lagomarsino was appointed Vice Chairman by the Senate Rules Committee.

Referrals

Under date of November 1, 1965, the subject matter of the following bills and resolutions were assigned to the committee for study:

Senate Bill 262, 1965 Regular Session, relating to marketing of agricultural products.
Senate Bill 659, 1965 Regular Session, relating to cattle.
Senate Bill 1199, 1965 Regular Session, an act to recodify the Agricultural Code.
Senate Bill 1240, 1965 Regular Session, relating to contracts for agricultural commodities.
Senate Bill 1241, 1965 Regular Session, relating to cooperative bargaining associations.
Senate Bill 1505, 1965 Regular Session, relating to the taxation of imported raw materials.

Assembly Bill 2742, 1965 Regular Session, relating to the sale of poultry.
Senate Resolution 185, 1965 Regular Session, relating to animals.
Senate Resolution 206, 1965 Regular Session, relating to cooling of milk.
Senate Resolution 275, 1965 Regular Session, relating to an interim study of imported raw materials.

Also under date of June 28, 1966, the subject matter of Senate Resolution 148, of the 1966 First Extraordinary Session, relating to farm labor disputes was assigned to the committee for interim consideration.

Of these measures hearings were held on Senate Bill 659, Senate Bill 1199, Senate Resolution 185, and Senate Resolution 148.

Capital Outlay Review Function

Senate Standing Rule 12.5 also provides that, "Any state agency which proposes the expenditure of any state funds for capital outlay providing for plans, specifications, construction or purchase of new facilities which are to be used for agricultural purposes shall first submit such proposals to the Fact Finding Committee on Agriculture to enable such committee to review and inspect such facilities, equipment or items and to report thereon to the Director of Finance. The Department of Finance shall consider the recommendations of the committee in approving or disapproving any such expenditures in order that any resulting economies may be reflected as soon as practicable."

The committee reviewed those various capital outlay items for both the 1965–66 and the 1966–67 fiscal years. The committee reports for those two fiscal years were incorporated in Chapter V of this report.[1]

Other Committee Activities

It is also to be noted that, based on the testimony of Mr. Brunel Christensen, Chairman of the Cattle Industry Advisory Committee, at a meeting of the Senate Fact Finding Committee on Agriculture held on December 7, 1965, at Salinas, California, final action was taken on the recommendations advanced by Booz, Allen & Hamilton, Inc., in its report on Survey of the Bureau of Livestock Identification, State Department of Agriculture. This activity is spelled out in more detail in Chapter III of this report. At the same time the committee took action to initiate a corollary hide-and-brand law study. (See Chapter IV.)

The committee's report on the subject of farm labor disputes, as authorized by Senate Resolution 148 of the 1966 First Extraordinary Session, was transmitted to the Senate on January 9, 1967, and is being published as a separate report.

Joint Meetings

1. On September 16–17, 1965, the committee met jointly in San Diego with the Assembly Interim Committee on Agriculture. This two-day meeting was called to receive testimony on commodity standards and on milk stabilization.

[1] The report to the Senate Fact Finding Committee on Agriculture, dated December 1965, entitled "Agricultural Training" in the Department of Corrections and Department of the Youth Authority is appended to Section A, Chapter V, of this report.

2. The committee also met jointly with the Assembly Interim Committee on Agriculture at Imperial, California, on January 6–7, 1966. This meeting had been called to conclude hearings on the subject of commodity standards.

3. On January 18, 1966, the committee met jointly with the California Assembly Interim Committee on Agriculture and the Oregon Legislature Interim Committee on Agriculture to consider marketing orders in the states of California and Oregon.

4. It is also to be noted that on November 7, 1966, the staff of the Senate Fact Finding Committee on Agriculture met jointly with a small legislative delegation of the Texas House of Representatives to discuss agricultural legislation.

Chapter II

NONSUBSTANTIVE REVISION of the AGRICULTURAL CODE

Chapter II

NONSUBSTANTIVE REVISION OF THE AGRICULTURAL CODE

The impetus for the recodification of the Agricultural Code stemmed from a speech made by Mr. W. C. Jacobson, then Director of the California State Department of Agriculture, at a statewide conference on agricultural legislation held in Sacramento on March 6, 1957. In this speech entitled, "Fewer and Better Laws for Agriculture," Mr. Jacobson said in part, "What we need, and need badly, is a comprehensive recodification into a more understandable text, couched in understandable language followed by an application of this viewpoint to new additions and amendments."

A nonsubstantive revision of the Agricultural Code was first discussed legislatively at a meeting of the Joint Interim Committee on Agriculture and Livestock Problems held in Sacramento on July 25, 1958. At that meeting the committee took action recommending that a bill be introduced at the 1959 Regular Session of the Legislature creating a legislative steering committee, including an appropriation to cover the committee's expenses. This action was rescinded by the Joint Committee at a meeting held in El Centro on November 21, 1958. At that same time the committee adopted an alternative plan requesting the office of the Legislative Counsel, in cooperation with the Joint Committee, to proceed as soon as practicable with a complete nonsubstantive revision of the Agricultural Code.

In January of 1959, the office of the Legislative Counsel was officially requested by the Joint Committee to prepare such a nonsubstantive revision of the Agricultural Code. By the commencement of the 1961 Regular Session of the Legislature, the preliminary initial drafting had been completed as to approximately 40 percent of the material to be included in the Code.

This recodification has been diligently carried out over the intervening years by the office of the Legislative Counsel with the aid and cooperation of the Senate Fact Finding Committee on Agriculture, the State Department of Agriculture, and the Industry Advisory Committee on Agricultural Code Revision.

The task has been a lengthy and exceedingly arduous one in view of the complexity of the provisions of the existing Agricultural Code and the requirement that the recodification be accomplished without making any substantive change in the law.

Other factors which further complicated the task include the numerous sessions of the Legislature which occurred during the course of the preparation of the legislation, the innumerable changes which were made in the provisions of the Agricultural Code at such sessions of the Legislature which had to be incorporated into the recodification, and the many persons and industries who were interested in the recodification and made suggestions and comments which had to be considered and resolved.

The introduction at the 1965 session of the Legislature of a bill to recodify the Agricultural Code, without substantive change, marked the culmination of a monumental task. This measure, Senate Bill 1199, was introduced by Senator O'Sullivan, then chairman of the Senate Fact Finding Committee on Agriculture, together with 12 other members of the committee. This measure was introduced in the Senate on April 20, 1965, and was defined as an act to recodify the Agricultural Code and including therein the codification of Chapter 89, Statutes of 1938, relating to agriculture and making an appropriation. It is to be noted that the Legislative Counsel's digest of the measure referred to SB 1199 as a working copy of tentative draft of nonsubstantive recodification of the Agricultural Code, including codification of Citrous Pest Control Act, which is intended for study purposes only.

Senate Bill 1199, in 10-point type, was printed in three separate parts, consisting of some 974 pages of print. While, as mentioned previously, impetus for the code revisions came from the remarks made by Mr. W. C. Jacobson, then the Director of the State Department of Agriculture, there was considerable support at that time from the industry itself for a complete revision of the Agricultural Code. Typical, was a communication from Mr. D. M. Anderson, Assistant General Manager and Secretary of Sunkist Growers, dated April 8, 1958, to the Honorable Paul L. Byrne, then chairman of the committee, in which Mr. Anderson is quoted as saying:

"From time to time we have heard reaction among members of the agricultural industry here in California indicating a desire to have the Agricultural Code revised and rewritten. It is our feeling that recodification alone would be of assistance to those of us who are concerned with the provisions of the code, and that it might also be appropriate to consider a revision which might involve some substantive changes.

"It seems logical to us that the Joint Interim Committee on Agricultural and Livestock Problems, of which you are chairman, could undertake an investigation to determine whether it would be advisable to proceed on this project. We shall, of course, be pleased to cooperate in any way that your committee determines would be helpful."

Sincerely,
D. M. Anderson

Also typical is a letter from Mr. Robert E. Hanley, Legislative Representative for the California Farm Bureau Federation, dated July 9, 1958, and addressed to Senator Paul L. Byrne, as follows:

"Dear Senator Byrne: As a result of a recommendation by our board of directors that a study be made of the Agricultural Code in an effort to bring it up to date, I inquired of Mr. Ralph Kleps as to the possibility of a revision of the California Agricultural Code by the Law Revision Commission. Mr. Kleps has advised me that the commission has no plans for the revision of the code but that your committee has considerable interest and plans a study of the subject by a subcommittee. In view of the recommendation by our board of directors, I would appreciate your advising us of any contemplated action in this regard. Should your committee decide to undertake this study,

we will be very happy to cooperate and offer such assistance as may be helpful."

Also, from the Agricultural Council of California, a letter from Mr. Richard Johnsen, Jr., executive secretary, to Senator Paul Byrne, dated July 3, 1958, which reads in part as follows:

"The members of the Agricultural Council of California feel that there is a need for a recodification of the Agricultural Code in the near future. It is my understanding that the Joint Committee on Agriculture and Livestock Problems has under consideration the problem of recodification.

"If your committee decides that the recodification is necessary and desirable you can count on the full support of the Agricultural Council and its members for any of your studies and research. We are standing by ready and willing to assist you in any way you deem appropriate."

Early in October of 1965, following the introduction of Senate Bill 1199 at the 1965 session of the Legislature, Senator Sturgeon, who since that time had been appointed chairman of the Senate Fact Finding Committee on Agriculture, expressed a desire to proceed with the consideration of this measure as soon as practicable and instructed the committee secretary to call together a small industry committee to assist the Fact Finding Committee in developing a realistic and workable approach to the task of recodification. Such a meeting was called and held on Wednesday, November 10, 1965, in Room 3189, State Capitol, Sacramento.

Participating in this meeting were the following:

Mr. Richard Johnsen, Executive Secretary, Agricultural Council of California
Mr. Frank W. Castiglione, Manager, Western Growers Association
Mr. Robert E. Hanley and Mr. Russell Richards, representing the California Farm Bureau Federation
Mr. Herman Grabow, representing the California State Grange, and
Mr. Homer Harris, representing the Los Angeles Produce Dealers and Brokers Association.

Also in attendance were Mr. Don Weinland, Assistant to the Director, State Department of Agriculture; Mr. William Geyer, Consultant to the Assembly Interim Committee on Agriculture; Mr. Stan Lourimore, Deputy Legislative Counsel; and Mr. Paul Huff, Consultant to the Senate Fact Finding Committee on Agriculture.

The following individuals were invited to participate but due to previous conflicts were unable to attend. These included Mr. Jim Hobson, California Milk Producers Federation; Mr. Robert Beckus, Manager, California Dairy Institute; and Mr. Harold Angier, representing the California Grape and Tree Fruit League.

In a statement submitted to the members present, entitled "A Suggested Approach to the Non-substantive Revision of the Agricultural Code", Mr. Paul K. Huff, committee consultant, indicated that this committee meeting had been called to develop a realistic and workable approach to the task of a nonsubstantive recodification of the Agricultural Code. This represents the first recodification since the Agricultural Code was established by the Legislature in 1933. Mr. Huff went on to say that under the present circumstances, it appeared obvious

that the members of the Senate Fact Finding Committee on Agriculture will not be able to personally spend the time which would be required to accomplish this revision. For this reason, it was felt that the services of some type of working industry advisory committee would be necessary in order to get the job done. It is this approach, and others that may be suggested, which this meeting has been called to discuss.

Mr. Huff further pointed out that it was Senator Sturgeon's hope that this entire undertaking could be completed in time to be introduced as an agreed upon code revision bill at the 1967 Regular Session of the Legislature. He further stated that if the advisory committee concept is ultimately recommended that: (1) The base of the committee be broadened so that all segments of the agricultural economy, including allied industries and organizations, are afforded representation; (2) That the committee and its chairman be appointed as soon as possible from a representative list of nominees to be selected by this group; (3) That insofar as is practicable and within budget, space, necessary clerical help and supplies be furnished to the advisory committee; (4) That the Department of Agriculture and the office of the Legislative Counsel be requested to provide whatever staff assistance is necessary; (5) That once appointed the committee organize itself into appropriate subcommittees; (6) That a series of suspense dates be established by the committee to assure that the 1967 target date can and will be met for introduction of the measure and that distribution of Senate Bill 1199, with an appropriate letter of transmittal, be accomplished by the Fact Finding Committee; (8) That the advisory committee report regularly to the Senate Fact Finding Committee on Agriculture on percentage of completion of the task and any problems, if any, encountered; (9) That the Consultant to the Senate Fact Finding Committee on Agriculture serve as liaison between the two committees; (10) That the advisory committee complete its task in time to permit a preprint of the bill in November 1966, prior to introduction of this committee bill early in the 1967 Regular Session of the Legislature as is feasible.

At this same meeting Mr. Stan Lourimore, who had been appointed by Mr. George Murphy, Legislative Counsel, to serve in a staff position providing legal counsel for the advisory committee, pointed out that his office was presently in the process of preparing a supplement to Senate Bill 1199 which would, in effect, be a recodification of the agricultural legislation introduced at the 1965 Regular Session. In this connection, it should be noted that Senator Lagomarsino, on November 1, 1965, requested permission on the floor of the Senate to have printed 2,500 copies of the recodification of the 1965 agricultural legislation, when available from the Legislative Counsel, as a supplement to Senate Bill 1199 of the 1965 Regular Session.

There appeared to be a general agreement that the service of some type of working industry advisory committee would be necessary to accomplish this rather tremendous undertaking. The assembled group seemed to be in general agreement that the suggested approach had merit.

After considerable discussion regarding the size of the industry advisory committee, how it would function, and the representation on the

committee, it was agreed that the following organizations should be invited to submit the name of an individual to serve on the advisory committee on the recodification of the Agricultural Code. These organizations are as follows:

The County Agricultural Commissioners Association
The California Fertilizer Association
The California Hay, Grain and Feed Association
The California Retail Grocers Association
The California Cattlemen's Association
The Produce Dealers Association, representing both Los Angeles and San Francisco
The Canners League of California
The Western Growers Association
The California Grape and Tree Fruit League
The California Milk Producers Federation
The Agricultural Council of California
California Farm Bureau Federation
California State Grange
Dairy Institute of California
Pacific Dairy and Poultry Association
California Nurserymen's Association
Western Agricultural Chemicals Association
California Bankers' Association
The Wine Institute of California

At that time it was also suggested and agreed that the Department of Agriculture and the office of the Legislative Counsel be requested to provide whatever staff assistance may be necessary to the advisory committee in this approach to the revision of the Agricultural Code.

The question of the chairmanship of the advisory committee was also discussed and it was agreed that rather than to let the committee select its own chairman, that the chairman of the advisory committee should be selected by the chairman of the Senate Fact Finding Committee on Agriculture, Senator Vernon L. Sturgeon. At a meeting of the Senate Fact Finding Committee on Agriculture held on Tuesday, December 7, 1965, in Salinas, Senator Sturgeon was authorized to appoint this advisory committee and he in turn directed the committee consultant to write letters to the various associations agreed upon by the group asking them to select an individual to represent their organization on the full advisory committee.

Those present at the informal advisory committee meeting held on November 10, 1965, were also provided with a list of the individuals, organizations, and agencies to whom it was planned to send copies of Senate Bill 1199 and the supplement. Those individuals present at the November 10 meeting were asked to review this list and add any names they deemed appropriate in order that every organization, agency, or individual who had any interest whatsoever in the recodification of the Agricultural Code would be properly notified.

Appointment of Industry Advisory Committee

In a news release dated February 3, 1966, Senator Sturgeon, Chairman of the Senate Fact Finding Committee on Agriculture, announced

the appointment of a top-level, 19-man Industry Advisory Committee to assist the factfinding committee in its complete nonsubstantive revision of the Agricultural Code. Appointed by Sturgeon to serve on the committee were:

Richard Johnsen, Jr., Executive Secretary, Agricultural Council of California, Sacramento, Chairman
Robert Beckus, Sacramento, Manager, Dairy Institute of California
Sid Bierly, Sacramento, Manager, California Fertilizer Association
Frank Castiglione, Los Angeles, Executive Vice President, Western Growers Assocation
William Fitchen, Anaheim, Secretary-treasurer, State Association of County Agricultural Commissioners
Merle Goddard, San Francisco, Executive Secretary, California Grocers Association
Herman Grabow, Sacramento, Legislative Representative, California State Grange
Robert E. Hanley, Berkeley, Legislative Representative, California Farm Bureau Federation
Homer A. Harris, Costa Mesa, representing the Associated Produce Dealers and Brokers of Los Angeles, Inc.
Frederick H. Hawkins, San Francisco, representing the Canners League of California
Robert Herrick, Lodi, representing the California Grape and Tree Fruit League
Kenneth M. Johnson, San Francisco, representing the California Bankers' Association
Keith Kirstein, Sacramento, Manager, California Grain & Feed Association
Elmer J. Merz, Sacramento, Executive Secretary, California Association of Nurserymen
Carl E. Nall, Los Angeles, Executive Secretary, Pacific Dairy & Poultry Association
Jeff Peyser, San Francisco, representing the California Wine Institute
George T. Poppic, Oxnard, representing the Agricultural Chemicals Association
Gordon Van Vleck, Sloughhouse, representing the California Cattlemen's Association
Richard Werner, Sacramento, Assistant Manager, California Milk Producers' Federation

Organizational Meeting Agricultural Code Revision Industry Advisory Committee, February 17, 1966, State Capitol, Sacramento, California

The major portion of this particular meeting was devoted to the assignment of responsibilities by sections of the Agricultural Code to the seven proposed subcommittees, together with the designation of subcommittee chairmen, the appointment of membership on the subcommittees, and the appointment of departmental people to staff the subcommittees.

Membership on Subcommittee No. 1, entitled Administration and Fairs, consisted of Mr. Robert Hanley, Chairman, Mr. Kenneth M.

Johnson, Mr. Elmer J. Merz, Mr. William Fitchen, and Mr. Sid Bierly. The responsibilities assigned to this subcommittee consisted of the following:

General Provisions, Sections 1 through 49;
Division 1, State Administration, Sections 101 through 1208;
Division 2, Local Administration, Sections 2001 through Section 2344;
Division 3, Exposition and Fairs, Sections 3001 through Section 4704;
Division 14, Regulation and Licensing of Dogs, Section 30501 through Section 31508.

Mr. Don A. Weinland, Assistant to the Director, was assigned to Subcommittee No. 1.

Membership on Subcommittee No. 2, entitled Division of Plant Industry, consisted of Elmer Merz, Chairman, Frank Castiglione, Homer Harris, George Poppic, William Fitchen, and Mr. Herrick.

The responsibilities assigned to Subcommittee No. 2 were as follows:

Division 4, Plant Quarantine and Pest Control, Sections 5001 through 8808;
Division 5, Part 4, Animals Detrimental to Agriculture, Sections 11201 through 11391;
Division 8, Vessel and Aircraft Garbage, Sections 16001 through 16154;
Division 13, Chapter 1, Bees, Sections 29001 through 29255;
Division 18, Chapter 3, Seed Potatoes, Sections 52651 through 52742;
Division 19, Nursery Stock, Sections 53301 through Section 53771.

Mr. Clyde E. Browning, of the Division of Plant Industry, was assigned in a staff capacity to Subcommittee No. 2.

Membership on Subcommittee No. 3, entitled Division of Animal Industry, consisted of the following:

Herman Grabow, Chairman, Dick Werner, Gordon Van Vleck, Robert Hanley, Robert Beckus, and Carl Nall.

Responsibilities assigned to Subcommittee No. 3 consisted of the following:

Division 5, Animal and Poultry Quarantine and Pest Control, Part 1 through Part 3, consisting of Sections 9101 through 10990.
Division 9, Part 3, Chapter 4, Meat Inspections and Sanitation, Sections 18651 through 19036.
Division 12, Part 1, Poultry & Rabbits, Sections 24501 through 25151, and Part 3, Poultry, Sections 26401 through 27232.
Division 15, Milk and Milk Products Act of 1947, Sections 32501 through 39524.

Mr. William H. Rockey, Staff Assistant, Division of Animal Industry, was assigned to Subcommittee No. 3 in a staff position, with Mr. Albert E. Reynolds, Chief of the Bureau of Dairy Service, as an alternate.

Membership on Subcommittee No. 4, Division of Standardization and Inspection, consisted of Sid Bierly, Chairman, Frank Castiglione, Fred

Hawkins, Homer Harris, George Poppic, Keith Kirstein, Merle Goddard, William Fitchen, Bob Herrick, and Jeff Peyser.

This particular subcommittee, Subcommittee No. 4, had more responsibilities than any of the others and consequently the 10-man membership. These responsibilities include the following:

Division 6, Agricultural Pest Control Business, Sections 11401 through 11940.
Division 7, Agricultural Chemicals, Livestock Remedies, and Commercial Feeds, Sections 12501 through 15151.
Division 12, Part 2, Classification of Poultry and Rabbit Meat, Sections 25401 through 26151;
Part 4, Eggs and Egg Products, Chapters 1 and 2, Sections 27501 through 27915;
Chapter 3, Egg Products, Administered by Dept. of Public Health, Sections 27951 through 28141.
Division 13, Chapter 2, Honey, Sections 29401 through 29735.
Division 16, Certification, Processing and Canning, and Canned Foods, Chapters 1 through 3, incl., Sections 40501 through 41193:
Chapter 4, Canned Foods, Administered by Dept. of Public Health, Sections 41301 through 41582.
Division 17, Fruit, Nut, and Vegetable Standards, Sections 42501 through 50891.
Division 18, Chapter 1, Field Crops, Sections 52001 through 52091;
Chapter 2, California Seed Law, Sections 52251 through 52514;
Chapter 4, One-Variety Cotton, Sections 52851 through 52983.
Division 20, Chapter 3, Agriculture Warehouses, Generally, Sections 54601 through 54861;
Chapter 4, Grain Warehouses, Sections 55001 through 55118;
Chapter 5, Grain and Seed Cleaners, Sections 55251 through 55255;
Chapter 8, Produce Markets, Sections 56801 through 56982.
(Chapter 8 administered by Director of Industrial Relations)

Membership on Subcommittee No. 5, Division of Compliance, consisted of Gordon Van Vleck, Chairman, Robert Hanley, Herman Grabow, and Merle Goddard.

Responsibilities by sections assigned to Subcommittee No. 5 include the following:

Division 9, Part 1, Animals at Large, Sections 16301 through 17128;
Part 2, Unlawful Marking and Branding, Sections 17401 through 17954;
Part 3, Chapter 1, General Provisions, Sections 18201 through 18221;
Part 3, Chapter 2, Packers and Stockyards, Sections 18351 through 18382;
Part 3, Chapter 3, Warranties, Sections 18501 through 18502.
Division 10, Cattle Protection, Sections 20001 through 22086.
Division 11, Horses, Mules, Burros, Sheep and Swine, Sections 23001 through 23981.
Division 22, Chapter 2, California Beef Council Law, Sections 64501 through 64736.

Mr. Hans Van Nes, Staff Specialist, Bureau of Livestock Identification, was assigned in the staff position on Subcommittee No. 5.

Membership on Subcommittee No. 6, Division of Agricultural Economics, included the following: Fred Hawkins, Chairman, Kenneth Johnson, Jefferson Peyser, and Keith Kirstein.

Responsibilities assigned to Subcommittee No. 6 by section included the following:

Division 20, Chapter 1, Nonprofit Cooperative Associations, Sections 54001 through 54294;

Chapter 2, Cooperative Bargaining Associations, Sections 54401 through 54462;

Chapter 6, Processors of Farm Products, Sections 55401 through 55922;

Chapter 7, Produce Dealers, Sections 56101 through 56652.

Division 21, Part 1, General Provisions, Sections 58001 through 58454;

Part 2, General Marketing Laws, Sections 58601 through 60015;

Part 3, Chapter 3, Marketing of Edible Nuts, Sections 62801 through 62834.

Mr. Vernon L. Shahbazian, Chief of the Bureau of Marketing, State Department of Agriculture, was assigned to Subcommittee No. 6.

Membership on Subcommittee No. 7, Division of Dairy Industry, consisted of Merle Goddard, Chairman, Robert Beckus, Herman Grabow, Carl Nall, and Richard Werner.

Responsibilities by sections assigned to Subcommittee No. 7 consisted of the following:

Division 20, Chapter 9, Dairy Produce Exchanges, Sections 57101 through 57222;

Division 21, Part 3, Chapter 1, Marketing of Milk and Other Dairy Products, Sections 61301 through 61573;

Chapter 2, Stabilization and Marketing of Fluid Milk and Fluid Cream, Sections 61801 through 62643.

Division 22, Chapter 1, the Dairy Council of California Law, Sections 64001 through 64292

Mr. Weldon F. Vedder, Bureau of Milk Stabilization, was assigned to this subcommittee in a staff position.

It should be noted here that the drafting rules which, in general, were followed in the preparation of the Agricultural Code recodification were the drafting rules in the 1949 Report of the California Code Commission, pages 26 through 37.

In reviewing the draft the primary task of the full committee and the subcommittees was to determine whether or not any substantive change in the law had been made by the recodification, either as a result of the changes which were made in the language of the code or in the arrangement of the provisions of the code.

The committee also reviewed the form in which the recodification was cast; the grouping of provisions; and the language which

was used, in order to determine whether the form, the grouping of provisions, and the language was as clear and logical as possible without making any substantive change in the law.

Finally, the committee was charged with ascertaining whether there were any errors in the recodification, such as transpositions in section numbers, erroneous section cross-references, mistakes in the titles of officers or offices, or errors in spelling, grammar or punctuation.

At this point in time it should be noted that SB 1199 was obsolete by the time it came back from the printer, in the sense that it did not include those measures of an agricultural nature enacted by the Legislature at the 1965 Regular Session.

Nevertheless, Senate Bill 1199 was carefully reviewed by the State Printer, the office of the Legislative Counsel, the staff of the Senate Fact Finding Committee on Agriculture, and personnel within the State Department of Agriculture. A number of errors were discovered. These were corrected, and together with the recodification of the 1965 legislation were published subsequently as preprint Senate Bill No. 1, 1967. It was from this preprint that the full committee and the various subcommittees and other interested individuals and organizations made their final draft.

It is to be noted here the committee members were also advised that 1,000 copies of preprint Senate Bill No. 1, 1967, were available and copies were mailed to all interested agencies, organizations and individuals with an appropriate cover letter urging all concerned to actively participate in the revision of the Agricultural Code by oral or written presentation to the various subcommittees or the full committee.

In his instructions to the chairmen of the respective subcommittees, Mr. Richard Johnsen, Jr., chairman of the full committee, asked that the subcommittee reports due for presentation to the full committee on April 14th, the date scheduled for the next meeting of the full committee, include, but not necessarily limited to, the following:

1. Areas of agreement that the revision is nonsubstantive.
2. Areas of disagreement:
   (a) Agreed to revision of language;
   (b) Disagreement to be resolved by full committee.
3. Areas of technical corrections.
4. Areas of substantive change agreed to by all concerned for possible inclusion in a trailer bill.

Conformance of the Agricultural Code With the 1965 Evidence Code

Under date of August 10, 1966, the committee consultant was advised by Mr. John H. DeMoully, Executive Secretary of the California Law Revision Commission, that the legislation which enacted the Evidence Code also amended or repealed a substantial number of sections in other codes to harmonize those codes with the Evidence Code. It was further pointed out that one aspect of the continuing study of the Evidence Code is the determination of what additional changes, if any, are needed in other codes. The commission had studied the Agricultural Code for this purpose and concluded that a substantial

number of changes should be made in the Agricultural Code to conform it to the Evidence Code.

Mr. DeMoully went on to say,

"We cannot state with certainty that all of the changes the commission recommends reflect existing law. There are a number of them, however, that clearly make no change in existing law and you may want to consider them in connection with the revision of the Agricultural Code. For example, the revisions contained in the tentative recommendation of Section 115, 124, and 152, obviously make no change in existing law. In the opinion of the commission, the repeal of Section 1105 of the Agricultural Code would merely eliminate a section that is a specific application of the general rule stated in Agricultural Code Section 18. The deletion of the last sentence of Section 438 and Section 1267 would eliminate unnecessary and confusing language. The amendments of Sections 1168.2 and 1300.3-2 would conform those sections to the comparable section of the State Administrative Procedure Act—Government Code Section 11513.

"Each section in the tentative recommendation has an explanatory comment which may be helpful in determining whether the revision is one that would be suitable for inclusion in the new Agricultural Code."

This specific request was considered by the Industry Advisory Committee on Agricultural Code Revision at a meeting held in Sacramento on September 22, 1966. The full committee took the position that it did not want to consider the code commission changes as a part of its nonsubstantive revision. This was done primarily because Mr. DeMoully could not state with certainty that all of the changes recommended by the California Law Revision Committee reflect existing law.

Advisory Committee Meetings

A total of seven meetings of the Industry Advisory Committee on Agricultural Code Revision were held as follows:

November 10, 1966	Sacramento
February 17, 1966	Sacramento
April 14, 1966	Sacramento
May 16, 1966	San Francisco
July 28, 1966	Sacramento
September 22, 1966	Sacramento
October 26–27, 1966	Newport Beach

Innumerable meetings of the seven subcommittees were held throughout the state during this same period of time. These seven subcommittees reviewed, word by word and section by section, those portions of Preprint Senate Bill No. 1 assigned to their respective sucommittees for study.

The subcommittees in turn reported regularly to the full committee on their accomplishments, and as instructed by Chairman Johnsen.

Progress Report

On September 12, 1966, the Senate Fact Finding Committee on Agriculture met at the California State Prison, Folsom. At this meeting the committee consultant read into the record the following progress report by Richard Johnsen, Jr., Chairman of the Advisory Committee:

"Dear Senator Sturgeon:

"As chairman of the Industry Advisory Committee on Agricultural Code Revision, I wish to report briefly to you and the Senate Fact Finding Committee on Agriculture that your industry committee has been working diligently on the task you assigned.

"The 19-member industry committee you appointed has been broken into seven subcommittees to study the various phases of the revision of the Agricultural Code. All members of the committee have worked hard to make sure that the revision is nonsubstantive in nature and that the industry segments affected know what is taking place. We have had excellent cooperation from the office of the Legislative Counsel, particularly in the person of Stanley Lourimore. We have also had excellent cooperation from the California Department of Agriculture. They have worked with the full Industry Advisory Committee and with each of the seven subcommittees.

"The next meeting of the Industry Committee will be held in Sacramento beginning at 9:00 a.m. on September 22. Late in October we plan a two-day meeting of the full committee and trust that it will be our final session. Assuming that it is, we will then be able to present the final nonsubstantive revision of the Agricultural Code to your Senate Fact Finding Committee on Agriculture. With this code revision, we hope to present a trailer bill which will include agreed-to, noncontroversial, but substantive changes in the Agricultural Code.

"I am sorry that I cannot be with you at this meeting of your Senate Fact Finding Committee on Agriculture, but business forces me to be elsewhere.

"If you have any questions concerning the activities of your Industry Advisory Committee, I am sure your executive secretary, Paul Huff, can answer them. Mr. Huff has been invaluable to the Advisory Committee and I believe that it would not be operating without his excellent assistance."

Richard Johnsen, Jr.
Executive Secretary
Agricultural Council of California
P.O. Box 1712
Sacramento, California 95808

Completion of Revision

As was indicated in the progress report by Mr. Johnsen, the final two-day meeting of the committee was held on October 26-27, 1966, in Newport Beach. At the meeting the committee hammered out the final draft of the nonsubstantive revision, which draft was then forwarded to the State Printer to be printed in form for introduction at the 1967 Regular Session of the Legislature.

Trailer Bill and/or Trailer Bills

The committee also approved numerous items for inclusion in the trailer bill to follow the code revision measure.

Prior to introduction, the trailer bill will in all probability be broken up into a package of bills, each containing related subject matter.[1]

[1] As introduced on January 3, 1967, the code revision measure became Senate Bill No. 1 and the trailer legislation Senate Bills Nos. 2 through 8.

It is to be emphasized that the trailer bill, or bills, include only noncontroversial items approved by the full committee which the Legislative Counsel Bureau could not categorically state were nonsubstantive in nature.

The trailer bill or bills will accomplish for example, among other things, such items as the following:

1. Delete repetitious, redundant, and obsolete language.
2. Add clarifying language.
3. Add language to more clearly define existing terms.
4. Provide conforming language where necessary.
5. Redefine existing language to conform to existing industry understanding and usage.
6. Correction of wordage in existing sections which are obviously erroneous.

Agricultural Code Recodification Questions Presented by Present Provisions

The Legislative Counsel Bureau during the course of its preparation of the Agricultural Code Revision, raised some 114 pages of questions regarding the language appearing in existing provisions of the Agricultural Code.

When this document was presented to the Advisory Committee for consideration, the Legislative Counsel Bureau said that in questioning the meaning of these existing terms the bureau did not intend to imply that the term may not have a well-understood general meaning or definition. However, the Legislative Counsel Bureau was questioning the exactness of the term, and the advisablility of a more precise indication of the definite limits of the term, particularly in view of the criminal penalties which may be applicable to any violation of the Agricultural Code.

Advisory Committee Action

Many of the questions raised by the Legislative Counsel Bureau were considered by the committee. Of those questions considered, no action was taken when testimony from industry and the Department of Agriculture representatives indicated the question did not presently constitute a problem area.

On the other hand, a considerable number of the questions raised were technical in nature and noncontroversial and corrective language was ultimately recommended in such cases for inclusion in the trailer bill.

Time did not permit the committee to conclude its review of all of the questions raised by the Legislative Counsel Bureau. A majority of the members of the Advisory Committee were of the opinion that they should not attempt to resolve the questions which appeared to be outside of the assigned scope and responsibility of their committee, and particularly since many of the questions raised were of a substantive nature. For this reason, it was generally agreed that no further action would be taken by the committee on the remaining questions raised by the Legislative Counsel Bureau.

However, the committee did feel that many of the questions raised by the Legislative Counsel Bureau were valid and in the interest of all concerned and should be resolved, if at all possible.

With this thought in mind, the Advisory Committee recommends that this matter be called to the attention of the Senate Fact Finding Committee on Agriculture for its consideration and ultimate disposition.[1]

At a meeting held in Sacramento on November 29, 1966, the Senate Fact Finding Committee on Agriculture accepted the report of Chairman Johnsen and the recommendation of the Advisory Committee that the committee consultant be instructed to expedite the preparation and printing of the code revision bill, together with the required trailer bills, for introduction as committee bills as soon as possible following commencement of the 1967 Session of the California Legislature.[2]

EXHIBIT I[3]

AGRICULTURAL CODE RECODIFICATION QUESTIONS PRESENTED BY PRESENT PROVISIONS

CROSS REFERENCE TABLE[4]

Preprint Senate Bill No. 1, 1967	Senate Bill No. 1, 1967
Code Section	Code Section
5028	5025
5501	5023
5531	5821
5701	5401
5704	5404
5792	5492
5793	5493
5985	5635
6251	6341
6301	6401
6401	6501
6402	6502
7901	5321
7903	5323
7923	5763
8004	6104
8005	6105
8076	6176
8101	5901

[1] A copy of these questions together with the department's reply to each is appended, marked Exhibit 1.

[2] As introduced on January 3, 1967, the code revision measure became Senate Bill No. 1 and the trailer legislation Senate Bills Nos. 2 through 8.

[3] As of January 31, 1967, the date this report was transmitted to the Senate, answers to the questions raised in the following sections were not available:

Sections	*Sections*	*Sections*	*Sections*
6105	28027	30651	41304
6176	28028	30804	41362
27991	28030	30955	41391
27992	28031	31102	41392
27994	28085	31104	41501
28022	28088	31106	56803
28023	28094	31252	56807
28024	28095	31508	56922
28025	30502	41301	56959

[4] Unless otherwise listed on this table, all sections enumerated in this exhibit are from the preprint Senate Bill No. 1, 1967.

Agricultural Code Recodification
Questions Presented by Present Provisions

Section 13, page 2, lines 45 to 49

Does this section actually authorize any deputy, inspector, or agent who is duly authorized, for example, by the Director of Agriculture, to exercise any power or authority which is given by the Agricultural Code to the director (see *Eden Memorial Park Assn. v. Dept. of Public Works* (1963), 59 Cal. 2d 412, 419)? Only powers which the director is not required to perform personally (see 1 Ops. Cal. Atty. Gen. 78, 79; 15 Ops. Cal. Atty. Gen. 271, 273)? Only purely ministerial powers (see 19 Ops. Cal. Atty. Gen. 180, 181–182)?

What does "duly authorized" mean?* In writing (see 1 Ops. Cal. Atty. Gen. 79)?

Section 13, page 2, lines 45 to 49—We think this section is authority for the director to delegate all powers conferred upon him, except those which he is required by statute to exercise personally. The delegation is not limited to ministerial duties. "Duly authorized" does not necessarily require authorization in writing. By appointment to a civil service position, the director authorizes an employee to perform the duties of the position. However, it is customary for the delegation of certain powers to be written, such as the authorization to issue an official notice to hold a hearing, or to issue an order or regulation.

Section 106, page 5, line 40

What does "recognized college of veterinary medicine" mean? Recognized by whom? On what standard?

Section 106, page 5, line 40—We think "recognized college of veterinary medicine" means any college recognized by the Board of Examiners in Veterinary Medicine in the Department of Professional and Vocational Standards.

Section 282, page 7, lines 44 and 45

Should the terms "root stock" and "top stock" be defined by the code?

Section 282, page 7, lines 44 and 45—We have not found any need for defining "root stock" and "top stock." The terms are well understood by the industry.

Section 402, page 9, line 49

What does "common practice" mean?

Section 402, page 9, line 49—We are not sure what "common practices" mean as used here. We suggest that the section be clarified by deleting the words "in accordance with common practices."

Section 408, page 10, lines 20 to 22

Should not the basis upon which the Director of Agriculture is authorized to enter upon any premises to inspect the premises or any plant, appliance, or thing which is on the premises be spelled out to avoid any question that this section authorizes an unreasonable search in violation of the Fourth Amendment of the United States Constitution?

Section 408, page 10, lines 20 to 22—It would be desirable to state the bases upon which the Director of Agriculture is authorized to enter premises to inspect.

Section 433, page 10, lines 40 and 41

Should the meaning of these lines be clarified?

Section 433, page 10, lines 40 and 41—We do not believe it mandatory that the meaning of these words be clarified. However, we suggest the following:

Delete the words "and with all other persons who are necessary to secure the best results to agriculture in this state" and insert:

government agencies, institutions, or persons having information necessary to secure the best results to agriculture in this state.

Section 434, page 10, lines 47 and 50

Must the illustrative statement or material contain "all" the information which is best adapted to advance agriculture?

Should "television" or other means of communication be mentioned as well as radio?

Section 434, page 10, lines 47 and 50—

(a) The word "all" should be stricken from line 47.

(b) Television or other means of communication should be mentioned.

Section 435, page 11, lines 7 and 8

Should the term "parent root and top stock" be defined?

Section 435, page 11, lines 7 and 8—See answer to Section 282.

Section 461, page 11, lines 44 and 46

Should the terms "pest" and "disease" be defined?

Section 461, page 11, lines 44 and 46—We do not think new definitions of pest or disease are needed. However, we suggest that reference be made to pest as defined in Section 5006, and that the section be further revised to show that infectious, transmissible, and contagious diseases of livestock and poultry are included.

Section 464, page 12, line 18

Should "livestock" be changed to "animal"?

Section 464, page 12, line 18—We believe it desirable to change "livestock" to "animal."

Section 627, page 14, line 40

What does "appurtenant facilities" mean?

Sections 627, page 14, line 40—"Appurtenant facilities" means such items as fences, parking spaces, landscaping, wells, rights-of-way, roadways, etc.

Section 651, page 15, lines 28 and 29

What if the building was purchased, rather than constructed?

Section 651, page 15, lines 28 and 29—The recovery of the cost of buildings purchased is not covered here. Therefore, to broaden the coverage for any building that might be purchased, we suggest striking the words "the construction of."

Section 653, page 15, line 49

What about buildings which are purchased?

Section 653, page 15, line 49—This section does not cover buildings purchased. To cover buildings that might be purchased we suggest that the words "or purchased" be inserted after the word "constructed."

Section 1105, page 19, lines 6 and 7

What are the seven major poultry districts of the state? Should they be designated?

Section 1105, page 19, lines 6 and 7—At the time the Poultry Improvement Commission Act was passed, the seven major poultry districts were:

1. San Diego area
2. Southern California other than San Diego
3. Coastal area above and below San Luis Obispo
4. Salinas, Watsonville, and San Jose area
5. The upper San Joaquin Valley
6. The Sacramento Valley
7. The Sonoma County area

The districts do not need to be designated. There are no precise boundaries for the districts. This commission is not under the jurisdiction of the Department of Agriculture. If changes are to be made they should be based on recommendations of the commission.

Section 2125, page 21, line 45

Is this section obsolete? Are there still any such counties?

Section 2125, page 21, line 45—The section is not obsolete. It still applies in a few counties.

Section 2153, page 22, line 36

Should the basis for such a recommendation be designated?

Section 2153, page 22, line 36—The basis for such a recommendation is whether or not the person is competent to perform the duties in that particular county. This could be stated in the section if it is determined necessary to state the basis.

Section 2181, page 22, line 48

What must the petition allege?

Section 2181, page 22, line 48—The petition must allege that the commissioner is guilty of neglect of duty, incompetence, or misconduct in office.

Section 2182, page 23, line 6

Is there only one such association? What if there is disagreement as to the selection of members of the board?

Section 2182, page 23, line 6—There is only one voluntary association of commissioners of the state. If there is disagreement as to the selection of members of the board, the hearing would be deferred until both parties could agree as to the third person for the trial board.

Section 2275, page 26, line 24

What is the association?

Section 2275, page 26, line 24—The association is the State Association of County Agricultural Commissioners.

Section 2280, page 27, line 12

What does this mean?

Section 2280, page 27, line 12—This section means that when the director acts with the commissioner he may exercise the powers given to the commissioner which are not also common to the director. Examples are powers given to the commissioners in Section 5501 and 5721.

Section 3405, page 31, line 42

Is there any longer any need for this section?

Section 3405, page 31, line 42—All references have been corrected in the Agricultural Code. It could be required by other laws. The California State Fair and Exposition will go out of existence in 1969. See Section 3522.

Section 3951, page 46, line 43

What prevents more than one such association being formed in any district?

Section 3951, page 46, line 43—The section must be construed along with Sections 3952 and 3959. The code does not specifically prohibit more than one association for each district. However, the obvious intent is to have only one association. The directors are appointed by the Governor, and the word "a" in line 45 appears to limit the number of associations to one per district.

Section 4005, page 50, line 7

What is effect of Sec. 5, Art. XX, Cal. Const. on this provision?

Section 4005, page 50, line 7—Article XX, Section 5 of the Constitution applies to budgets of state departments, but it is not clear that it also applies to each

subbudget within a department. We are unaware of any authority so requiring. For apparently contraauthority, see *People vs. Todd* 23 Cal. 181, re tax assessment dates.

Section 4301, page 55, line 37

What is the standard for the issuance of such a permit?

Can the association refuse to issue?

What grounds?

Section 4301, page 55, line 37—The permit may be issued at the discretion of the directors of the association when deemed by them to be in the public interest in the administration of fair activities. See Section 4051. Apparently the Legislature intended to leave a wide discretion to the directors' anticipating unforeseen circumstances that might arise. Fundamentals of procedural and substantive due process would doubtless be applied by any court called upon to review the directors' decision.

Section 4443, page 59, line 39

Does this conflict with Sec. 4440?

Does this apply whether or not district fair received an apportionment?

Section 4443, page 59, line 39—Section 443 affects only new fairs erected which must be district fairs. It protects existing county fairs. See existing Section 92 and proposed Sections 4432 and 4433.

Section 4507, page 62, line 20

In subd. (b), what is the meaning of "regional," "sectional"?

Should "region" be changed to "area"? See subd. (c).

Section 4507, page 62, line 20—Regional means an area of the state and has been used by legislative committees for their purposes in describing fairs. Currently we have divided the state into four regions to select a "regional" fair. "Area," as used in subdivision (c) refers to a smaller subdivision than regional.

Section 4701, page 65, line 15

What is designation "instrumentality of the state" intended to signify?

Section 4701, page 65, line 15—The phrase "instrumentalities of the state" may have been included in Chapter 15, Section 5, Statutes of 1938 to avoid an argument based on illegality of a gift of public funds to a privately controlled organization. See later opinion 46/56, 7 Ops. Cal. Atty. Gen. 110. We are not prepared to state in the abstract how far citrus fairs are subject to state control in the conduct of the fairs or whether they are public entities for tort liability under Section 811.2 of the Government Code.

Section 5003, page 66, line 15

When is a plant a "crop"?

Section 5003, page 66, line 15—Any plant which produces seed or seed-like fruit such as beans, flax, beets, onions, etc., may become a crop seed plant if produced in sufficient quantity to be considered an agricultural crop.

Section 5004, page 66, line 25

What sort of investigation and hearing is required?

Section 5004, page 66, line 25—An investigation and hearing comparable to that provided for in Section 11180 of the Government Code is required.

Section 5008, page 66, line 49

What is difference between "article" and "thing"? Cf. Sec. 5002.

Section 5008, page 66, line 49—As used in Section 5008, "article" and "thing" appear to be synonymous. We feel that "thing" may be given a broader interpretation, and suggest that "article" might be deleted in this section.

As used in Section 5002, the term "article" appears to be more desirable, having in mind the usual "articles" which may be used in connection with the growing, harvesting, handling, or transporting of agricultural commodities. We do not believe that the terms as used conflict in their meanings in these separate sections.

Section 5025

How do horticultural crops differ from agricultural crops?

Section 5025—Agricultural crops may include crops which are considered as horticultural crops. In some cases the only difference between horticultural crops and agricultural crops is the manner in which they are produced.

Section 5104, page 69, line 20

What sort of a hearing is required?

Section 5104, page 69, line 15—A hearing generally comparable to that provided for by Section 11502, et seq., except that the provisions of 11503, 11504, and 11506 would be inapplicable.

Section 5023

See Sec. 408.

Section 5023—See answer to Section 408.

Section 5821

What does "near" mean?

Section 5821—As used in this section, "near" means a variable distance from the "premises" from which pests may be expected to spread to host plants on the premises if present. This term cannot be specifically defined since the distance will vary, depending on the capabilities of the pest to move about.

Section 5401

What does "and shall be prosecuted as such in all actions and proceedings" mean? Is it necessary?

Section 5401—The phrase "and shall be prosecuted as such in all actions and proceedings" appears to have been placed in this section to emphasize a limitation on proceedings to be taken. It may not be necessary, but we suggest that the phrase be allowed to remain.

Section 5404

What does "nearby" mean?

Section 5404—As used in this section, "nearby" means a variable distance from the "property" within which the pest may be expected to spread and thus constitute a hazard to other properties.

Section 5492

What does "adjacent" mean?

Section 5492—As used in this section, "immediate" means bordering or adjoining, or close by. We believe this is a valid understandable term as used in this section. "Adjacent" is intended to mean the same as immediate. We suggest striking the word "adjacent" in line 39.

Section 5493

What does "political subdivision of the state" include?

Section 5493—As used in this section, "political subdivision of the state" includes any political subdivision of the state not specifically covered in Sections 5791 or 5793.

Section 5635

Does this duplicate Sec. 5982? Can it be repealed as unnecessary?

Section 5635—Yes, Section 5985 duplicates Section 5982. It can be repealed as unnecessary.

Section 6341

What does "locality" mean?

What does "common occurrence" mean?

Section 6341—We cannot offer a specific definition of "locality." We believe the term is valid and understandable as used in this section.

"Common occurrence" is an indefinite term which is difficult to define. In practice the director or the commissioner must make this determination.

Section 6401

What does "harmful" mean?

Section 6401—As used in this section, "harmful" means harmful from the standpoint of being a means of introducing or spreading a pest which is or may be detrimental to agriculture.

Section 6501

What does "harmful" and "locality" mean?

Section 6501—See answer to Sections 6251 and 6301.

Section 6502

Are "seeds" included within the definition of "nursery stock"? See Sec. 53306.

Section 6502—Seeds are included within the definition of "nursery stock" as defined in Sections 5005 and 5007, which definitions are applicable to all provisions in Chapter 3 of Divison 4. Seeds are not included in the definition of "nursery stock" in Sec. 53306, which definition is only applicable to provisions in Division 19, concerning grades and standards for nursery stock.

Section 7201

What does "practically free" mean?

Section 7201—"Practically free" means free or of very limited occurrence. We feel that this terminology is proper in this section since proclamation cannot be made until after investigation and practical survey, and the determination must be left to the discretion of the Director.

Section 7204

What is a "farm journal"?

Section 7204—"Farm journal" is any daily or periodical publication of general distribution devoted to farming.

Section 7578, page 99, line 6

What does "otherwise processed" include? Processed to what degree?

Section 7578, page 99, line 6—Subpart (b) of this section should be clarified. We suggest that subpart (b) of Section 7578 be reworded to read "(b) denatured or otherwise processed to render the seed of any pest incapable of reproduction."

Section 7581, page 99, lines 25 and 26

Ch. 1973, Stats. 1961 increased the maximum limit of the jurisdiction of municipal courts in other actions to $5,000. Should this section be amended to conform?

Section 7581, page 99, lines 25–26—We think this section should be amended to conform with Chapter 1973, Stats. 1961, wherein the maximum limit of the jurisdiction of municipal courts in other actions has been increased to $5,000.

Section 7602, page 99, line 40

What is the standard for such a determination by the commissioner?

Section 7602, page 99, line 40—The standard for such a determination by the commissioner is that the cleaner be free of pests. We suggest that the section be changed to read: "7602. Upon application by the owner for such permit or if

the commissioner deems it necessary to determine that the cleaner is free from the seed of any pest, the commissioner may cause an inspection to be made of the cleaner of each permittee."

Section 5321

What does "not generally distributed" mean?

Section 5321—The determination that a pest is "not generally distributed" must be left to the discretion of the director. A pest which is not generally distributed is considered to be of limited distribution. We cannot offer a more specific definition of this term.

Section 5323

What do the following terms mean: "clearly consistent," "strict interpretation"?

Section 5323—We think "clearly consistent" and "strict interpretation" mean that there should be no doubt that the regulations are within the limits of the authority granted. We do not anticipate any problem or misinterpretation of the intent of this section, and cannot offer more specific definitions of these terms.

Section 5763

What does "otherwise" mean?

Section 5763—We feel that the term "otherwise" is superfluous and serves no good purpose in this section. We suggest that "or otherwise" be deleted in line 43.

Section 6104

What does "appreciable quantities" mean?

Sections 6104, 6105, and 6176—The caprifig provisions are administered at the local level by county agricultural commissioners. The commissioner should be best qualified to answer these questions.

Section 6105

What does "main crop" mean?

Section 6176

What does "standard procedures" mean?

By whom are "recognized procedures" recognized?

Section 5901

"Known" by whom? The director?

Section 5901—Yes. Is known by the director.

Section 8502, page 112, lines 42 and 43

What acreage or number of trees would qualify a person?

Should term "citrous acreage," as defined in Sec. 8405 be used instead of "lands . . . devoted to the growing of citrous fruits"?

Section 8503, page 112, line 47

Provided where by law?

Sections 8502, 8503—The questions concerning the Citrous Pest District Control Law should be directed to the districts which have been formed under this act. The department has no jurisdiction under this law.

Section 9121, page 135, line 3

What does "stock raising" mean?

Section 9121, page 135, line 3—"Stock raising" means the breeding or rearing of different kinds of livestock.

Section 9162, page 135, line 40

On what basis are tests or examinations "recognized"?

Section 9162, page 135, line 40—At present there are no other tests recognized by the department. The basis for recognizing other tests would be that they are comparable or more accurate than tests now specified.

Section 9301, page 136, line 21

What is the standard for the department to prescribe manner of dipping or treating?

Section 9301, page 36, line 21—The standard for the department to prescribe the manner of dipping or treating is a practical procedure which will eradicate the tick.

Section 9304, page 136, line 43

Continued until cured? Or what?

Section 9304, page 136, line 43—The treatment shall be continued until the ticks are eradicated from the cattle and the premises occuped by the cattle. This may take a year or more.

Section 9306, page 137, line 6

What if they have scabies? Treatment required?

Section 9306, page 137, line 6—Treatent would be required in Section 9302.

Section 9567, page 140, line 44

In subd. (a), what is the standard for the guidance of the director?

Section 9567—The standard for the guidance for the director is found under provisions of Section 9567, Subdivision (b), based upon professional judgment of the veterinary inspector.

Section 9642, page 143, line 46

Is "dipped" well understood term?

Section 9642—"Dipped" is well understood by livestock dealers and owners.

Section 9644, page 144, line 6

What does "prevalent" mean?

Section 9644—"Prevalent" means known to occur frequently.

Section 9982, page 150, line 47

What is the standard for the recognition of tests or examinations by the department?

Section 9982—At present there are no other tests recognized by the department. The basis for recognizing other tests would be that they are comparable or more accurate than tests now specified.

Section 10004, page 151, line 17

"Deemed necessary" by whom?

Section 10004—Deemed necessary by the director and the United States Department of Agriculture based upon professional judgment of the veterinary inspector.

Section 10082, page 155, line 31

What if there is a difference between appraisement of state and U.S. department representatives? Who selects which department is to make the appraisal?

Section 10082—The problem of a difference between appraisement of state and U.S. department representatives has never developed, but could be handled under the last two sentences of Section 10082 if it does occur.

Section 10083, page 156, line 7

In subd. (c), what is the standard for approval of such manner?

Section 10083 (c)—The standard for approval of such manner is that which will prevent reinfection of animals by the disease.

Section 10103, page 157, line 3

In subd. (a) what is the standard for designation by the department of public stockyards to handle such cattle?

Section 10103—The standard for designation by the department for public stockyards to handle reactors and tuberculosis exposed cattle is that public stockyards must be so equipped as to prevent contact with other cattle and the premises can be cleaned and disinfected after use. Standards are set forth by the California Department of Agriculture and agreed to by the United States Department of Agriculture.

Section 10309, page 158, line 44

What is the standard for approval of a test by the director?

Section 10309—The standard for approval of the test by the director is that the test is reasonably accurate.

Section 10351, page 160, lines 15, 17, 18

What is the standard for such designation of ages?

Is "dairy calf" well understood term?

Section 10351—The standard for designation of ages for vaccination of dairy calves is by research which shows the most efficient ages when animals should be vaccinated. The California Department of Agriculture expresses approval by regulations. See Section 753, Title 3, California Administrative Code.

"Dairy calf" is a well-understood term.

Section 10386, page 162, line 18

What is the standard for the designation of such conditions?

Section 10386—The standard for the designation of conditions under which cattle may move into a brucellosis control area is to control or eradicate brucellosis. The conditions established are based on the United States Department of Agriculture's uniform methods and rules for the control and eradication of brucellosis.

Section 10422, page 164, line 48

What if there is a difference between appraisement of state and U.S. department representatives? Who selects which department is to make the appraisal?

Section 10422—The problem of a difference between appraisement of state and U.S. department representatives has never developed, but could be handled under the last two sentences of Section 10422 if it does occur.

Section 10423, page 165, line 22

See Sec. 10083

Section 10423—The standard for approval of such manner is that which will prevent reinfection of animals by the disease.

Section 10703, page 166, line 24

What does "ordinary ranch to ranch transactions" mean?

Section 10703—"Ordinary ranch to ranch transactions" mean the direct movement of animals from one ranch to another ranch.

Section 10724, page 167, line 11

What if the swine are not shipped in by truck?

Section 10724—If shipment was made by rail, the health certificate would be attached to the waybill and be in the possession of the railroad.

Section 10726, page 167, line 28

What does "recognized slaughtering establishment" mean?

Section 10726—A "recognized slaughtering establishment" is one that is recognized by the United States Department of Agriculture to receive interstate shipments of slaughter animals.

Section 10725, page 167, line 23

Does this mean the standards which were adopted when the section became effective? If not, is the delegation valid?

Section 10725—In our opinion this means the standards in the current effective U.S.D.A. regulations. Volume 43, Ops. Atty. Gen. 1, 43 Ops. Atty. Gen. 275.

Section 10901, page 168, line 40

What does "ordinary household operations" mean?

Section 10901—"Ordinary household operations" means the functions within a family residence. In this case, reference is made to garbage from the family table being fed to swine on the same premises.

Section 11222, page 171, lines 45 and 46

What is the standard for the guidance of the director in prescribing the manner, terms, and conditions of cooperation?

Section 11222, page 171, lines 45 and 46—The standard for the guidance of the director in prescribing the manner, terms, and conditions of cooperation is effective control of predatory animals to minimize damage to livestock, agricultural crops, or standing timber.

Section 11321, page 173, line 3

Does the department have the authority to refuse to issue a permit? On what basis?

Section 11321, page 173, line 3—The law provides that every person who possesses a nutria shall obtain a permit (Section 11321) and shall provide a pen (Section 11351) that shall preclude escape of the nutria. We feel that we have the authority to refuse to issue a permit to possess nutria unless and until the person provides a pen constructed as prescribed in Sections 11352, 11353, and 11354 that will preclude escape.

Section 11327, page 173, line 40

What is the report required to contain?

Section 11327, page 173, line 40—The "forms which are supplied by the department" prescribe information necessary to enforce the chapter.

Section 11735, page 180, line 8

What is the standard for a determination of whether equipment is "unsuitable"?

Section 11735, page 180, line 8—There is no set standard. Each decision is based on the best knowledge available to the commissioner. He is guided by university reports where such are available.

Section 11736, page 180, line 17

Is there any right of appeal if the director is acting as the commissioner?

Section 11736, page 180, line 17—Since the director is the final authority there is no appeal when the director acts as the commissioner.

Section 11737, page 180, lines 25 and 26

What is the standard for a determination of whether equipment is "unsuitable"?

Section 11737, page 180, lines 25 and 26—There is no set standard. Each decision is based on the best knowledge available to the commissioner. He is guided by university reports where such are available.

Section 11739, page 180, line 47

Should this be "revocation" rather than "cancellation"? See Sec. 11740

Section 11739, page 180, line 47—We do not believe it makes any difference but for uniformity it could read "revocation" rather than "cancellation."

Section 11741, page 181, line 14

Is there a right to appeal when director acting as commissioner?

What is the effect of appeal and of the hearing, if granted?

Section 11741, page 181, line 14—Since the director is the final authority there is no appeal when the director acts as the commissioner. "Revocation" is set aside until the applicant has had an administrative hearing and the director has ruled on the evidence presented at the hearing.

Section 11791, page 182, line 32

How does "faulty" differ from "negligent"?

How does "careless" differ from "negligent"?

Section 11791, page 182, line 32—We believe "faulty" means to operate in an improper manner, but not due to indifference, negligence, or carelessness. "Careless" and "negligent" appear to be approximately the same.

Section 11910, page 184, line 32

Is this requirement constitutional? See *Blumenthal v. Bd. of Medical Exam.*, 57 Cal. 2d 228.

Section 11910, page 184, line 32—It has not been questioned in practice.

Section 12561, page 188, lines 36 and 37

What if the pesticide chemical in or on produce is not a "spray residue"?

Section 12561, page 188, lines 36 and 37—"We believe that any pesticide chemical in or on produce is a 'spray residue'."

Section 12601, page 189, line 31

What does "other added deleterious ingredients" mean? See definition of "spray residue," Sec. 12505. See also Sec. 12671.

What does "lot" mean?

Section 12601, page 189, line 31—"Other added deleterious substance" means any added substance which is harmful.

A "lot" is a collection of containers or items which are regarded as a distinct group. We have defined "lot" in the Administrative Code, Section 1351.1 with regard to eggs, as follows: ". . . a lot shall be a group of containers of eggs of one size or one grade, or one brand, and from one packer, one producer or any one source."

Section 12602, page 189, line 33

What does "lot" mean?

Must the director seize all of the produce present or may he seize only part of it?

What is distinction between "order" and "notice"?

Section 12602, page 189, line 33—For the definition of "lot" see Section 12601.

The director may seize all or any part of a lot he thinks is necessary.

We regard "order" and "notice" to be the same.

Section 12604, page 190, line 7

See Sec. 12601.

How does "maximum quantity" differ from "tolerance"?

Section 12604, page 190, line 7—"Maximum quantity" and "permissible tolerance" are the same.

Section 12606, page 190, line 18

How does "maximum" differ from "permissible tolerance"?

Shouldn't both "hold order" and "tag" be "removed"?

Section 12606, page 190, line 18—See Section 12604 for "maximum quantity" and "permissible tolerance."

Both hold order and tag should be removed if both are affixed to the lot.

Section 12607, page 190, line 25

How does "maximum" differ from "permissible tolerance"?

What does "reconditioned" mean?

What does "by-products purposes" mean?

Section 12607, page 190, line 25—See Section 12604 for "maximum" and "permissible tolerance."

"Reconditioned" means it has been reprocessed in some suitable manner to bring it within provisions of the law.

"By-product purposes" means a purpose other than that for which it was originally marketed.

Section 12614, page 191, line 30

How does "maximum" differ from "tolerance"?

Section 12614, page 191, line 30—See Section 12604 for definition of "maximum" and "tolerance."

Section 12615, page 191, line 38

What does "forthwith" mean?

Shouldn't both the "hold order" and "tag" be "removed"?

(See Sec. 12614.)

Section 12615, page 191, line 38—"Forthwith" means immediately or without delay.

Both hold order and tag should be removed if both are affixed to the lot.

Section 12641, page 192, line 1

How does "maximum" differ from "tolerance"?

Section 12641, page 192, line 1—See Section 12604 for definition of "maximum" and "tolerance."

Section 12647, page 192, line 37

Unless this is intended as a special limitation, shouldn't limit be raised in view of Ch. 1973, Stats. 1961, which raised the limit of the jurisdiction of municipal courts in other cases from $3,000 to $5,000?

Section 12647, page 192, line 3—It probably should be raised to $5,000.

Section 12753, page 193, line 22

What is the standard for the director to determine whether a plant or animal is a "pest"?

Section 12753, page 193, line 22—The standard for the director to determine a plant or animal a pest is stated in broad terms in the following qualifying words "which may infest or be detrimental to vegetation, man, animals or households. . . ."

Section 12759, page 194, line 10

Should this be any plant which "is growing" where not wanted? See also use of term "weed" in Sec. 12911.

Section 12759, page 194, line 10—The suggested wording is probably better.

Section 12801, page 194, line 45

What does "toilet purposes" mean?

Section 12801, page 194, line 45—"Toilet purposes" means cosmetics, perfumery, cologne, and similar substances.

Section 12802, page 195, lines 1, 13, and 17

What does "his neighbors" mean?

What does "deal in" mean?

Suppose a person mixes or dilutes more or less of an economic poison than the directions prescribe?

What does "established custom or practice" mean?

What does "becoming a registrant" mean?

Section 12802, page 195, lines 1, 13 and 17—"His neighbors" refers to persons living in the immediate vicinity.

If a person mixes or dilutes more or less of an economic poison than the directions prescribe, he is subject to the provisions of Section 12972.

"Established custom or practice" means a practice done by the majority of users in a certain area.

"Becoming a registrant" means applying for and receiving a certificate of registration from the director.

Section 12811, page 195, lines 27 and 28

What is "dealer in any economic poison" (See Sec. 12802, particularly exemption of farmer)?

What is "agent"?

Section 12811, page 195, lines 27 and 28—"Dealer in an economic poison" means one who buys and sells economic poisons.

"Agent" means an authorized, delegated representative of another seller.

Section 12812, page 195, line 41

What does "variety" mean? An additional fee for each labeled economic poison which varies in name or composition from original 10?

Section 12812, page 195, line 41—"Variety" means a product with a brand name or composition different from any other product.

Section 12813, page 196, line 1

What does "variety" mean?

Section 12813, page 196, line 1—"Variety" is defined in Section 12812.

Section 12816, page 196, line 25

What is the effect of a determination that the application be "reconsidered"?

Section 12816, page 196, line 25—It is again considered for registration.

Section 12819, page 196, line 44

With whom is the affidavit made?

Section 12819, page 196, line 44—To the director.

Section 12825, page 197, line 35

What does "repeatedly violates" mean?

What "powers" are granted by this? Powers of an "agency"?

Section 12825, page 197, line 35—"Repeatedly violates" means violates more than once.

The director has the powers granted the "agency."

Section 12851, page 198, line 7

What does "vendor" mean?

Section 12851, page 198, line 7—"Vendor" means seller.

Section 12852, page 198, lines 15 and 16

What does "established local custom" mean?

Section 12852, page 198, lines 15 and 16—"Established local custom" means a way of use by a majority of users in a certain area.

Section 12853, page 198, line 22

What does an "open lot" mean?

Section 12853, page 198, line 22—"Opened lot" means a lot that has been opened, that is, it is not sealed.

Section 12857, page 199, line 13

What is effect of filing protests?

Section 12857, page 199, line 13—A protest would stay the authorization until the director had considered the matter.

Section 12911, page 201, line 6

What does "seriously injurious" mean?

Section 12911, page 201, line 6—That which causes injury considered to be serious by experts in the field.

Section 12931, page 201, line 15

What does "full" mean?

Section 12931, page 201, line 15—"Full" means administratively adequate.

Section 12934, page 201, line 30

What is the standard for the fixing of the fees?

Section 12934, page 201, line 30—The standard for fixing the fees is the cost of the service.

Section 12961, page 201, line 36

What happens after an economic poison is seized and quarantined?

Section 12961, page 201, line 36—It remains in location where quarantined until permission is given to move it.

Section 12962, page 201, line 42

What is the standard for the granting of a permit?

Section 12962, page 201, line 42—The standard is the move that will assist in the solution of the problem which caused the quarantine.

Section 12991, page 202, line 33

Is "by himself, or through another" necessary?

If it is here, why isn't it also necessary in Sec. 12992?

Section 12991, page 202, line 33—"By himself or through another" is not necessary and can be deleted.

Section 12993, page 203, line 4

Is a license and registration of the product both required or may a person without a license sell the product if it is registered?

First par. Should it be "registrant" or "licensee"?

Section 12993, page 203, line 4—The terms "license" and "registration" are used interchangeably. A license is considered granted with the original registration. It is not necessary to have a license to sell a product registered by someone else.

First paragraph—either "registrant" or "licensee" appears applicable.

Section 14008 and
Section 14009, page 204, lines 28 and 34

Who may revoke? Either director or commissioner or only commissioner?

What is the effect of the hearing?

Sections 14008 and 14009, page 204, lines 28 and 34—The commissioner may revoke a permit which he issues. The director may revoke any permit.

The hearing offers the accused the protection of the Administrative Procedures Act and stays action until the hearing is concluded.

Section 14097, page 207, line 18

Registered with whom?

Section 14097, page 207, line 18—The product is registered with the director.

Section 14206, page 208, line 27

Is this a limitation on how a preparation must be used since "drug" by definition includes all such preparations? See Sec. 14261 which also seems to cast doubt on all inclusive definition of "drug."

Section 14206, page 208, line 27—This section is not a limit on how a preparation must be used. It is means to define "livestock remedy" which is not exactly synonymous with the term "drug."

Section 14207, page 208, line 37

What does "on the market" mean?

Section 14207, page 208, line 37—"On the market" means to offer for sale.

Section 14285, page 211, line 5

Does "principal address" mean "principal place of business"? See Sec. 14283.

Section 14285, page 211, line 5—"Principal address" is assumed to be the same as the principal place of business. Although in practice, the principal address may not be the location where the principal business is carried out.

Section 14294, page 212, line 28

What is effect of quarantine?

Section 14294, page 212, line 28—The effect of the quarantine is to prevent the removal of the product from its location except with permission of the director.

Section 14541, page 217, line 11

Is an "agent" registered or licensed or both? See Sec. 14651.

What does "dealer" mean?

Section 14541, page 217, line 11—We used "registered" or "licensed" interchangeably. An agent is not licensed as such. We think this language needs to be studied in relation to Sections 14621 and 14622.

"Dealer" means one who sells.

Section 14559, page 218, line 42

What does "term" mean?

Section 14559 (Leg. Counsel Q 14560), page 218, line 42—"Term" means available phosphoric acid.

Section 14562, page 219, line 16

Does exception go back to only "wool waste" or all 5 items mentioned?

Section 14562 (Leg. Counsel Q 14563), page 219, line 10—The exception refers to all five items.

Section 14565, page 219, line 29

What does "lot" mean?

Section 14565, page 219, line 29—"Lot" means a group of containers or items which are regarded as a distinct group.

Section 14566, page 219, line 34

What does "parcel" mean?

Section 14566, page 219, line 34—"Parcel" means the amount circumscribed by a container.

Section 14581, page 220, line 37

If the chemists change their method is the director required to change his?

Section 14581, page 220, line 37—The director is required to change his method if the chemists change theirs.

Section 14630, page 223, line 38

"Known" to whom?

What does "little value" mean?

By whom must a "false or misleading claim" have been made?

What does "repeatedly" mean?

Section 14630 (Leg. Counsel Q 14631), page 223, line 38—"Known" to the director and experts in the field.

"Little value" means nearly valueless as a fertilizer, agricultural mineral or auxiliary soil chemical.

"False or misleading claim" must have been made by registrant.

"Repeatedly" means more than once.

Section 14687, page 224, line 46

What is a "selling agent"?

How does he differ from a "dealer"?

Section 14687, page 224, line 46—"Selling agent" means a person authorized in some manner to sell the product.

"Selling agent" and "dealer" are generally synonymous.

Section 14708, page 225, line 50

How do you prevent an existing nuisance?

Section 14708, page 225, line 50—"Prevent" here means appropriate action to stop it from becoming a nuisance again.

Section 14752, page 227, line 1

What does "illegitimate business" mean?

Section 14752, page 227, line 1—"Illegitimate business" means business in violation of legal requirements of the chapter.

Section 14903, page 227, line 38

What does "legitimate" mean?

Section 14903, page 227, line 38—"Legitimate" business means a business regulated by the chapter, which operates in a lawful manner in accordance with the chapter.

Section 14962, page 229, lines 10 and 21

What does "certifying" mean?

In subd. (h) "recognized" by whom?

Section 14962, page 229, lines 10 and 21—"Certifying" means guaranteeing.

"Recognized" by the director.

Section 14963, page 229, lines 40 and 42

In subd. (b), what does "definite" mean?

In subd. (c), what does "quality index" mean?

Section 14963, page 229, lines 40 and 42—"Definite" means a quantitative expression which can be measured.

"Quality index" refers to a measurable value related to quality.

Section 14981, page 230, line 29

What is the standard for the director to fix such standards?

Section 14981, page 230, line 29—The standard is not stated in the article. The standard used is to accomplish the purposes of Sections 14962 and 14963.

Section 15106, page 234, line 41

"Recognized" by whom?

Section 15106, page 234, line 41—"Recognized" by the director.

Section 16401, page 238, line 36

What is a "livestock operation"?

Section 16401—The department's interpretation of "a livestock operation" as used here is that it means the growing, producing or handling of livestock at state or county institutions.

Section 16701, page 241, line 25

What do "town" and "village" mean?

Section 16701—We would interpret "town or village" to mean any center of population or group of houses, large or small, other than an incorporated city. The limiting factor is the absence of a group of houses.

Section 16801, page 241, line 43

What does "one of the recognized beef breeds" mean? Recognized by whom?

What is a cow of "good quality"?

Section 16801—(1) "One of the recognized beef breeds" means one of the breeds of cattle produced or raised primarily for the production of beef.

(2) "Recognized by whom" means generally recognized by the cattle industry.

(3) A cow of "good quality" is one that generally has the desirable characteristics of the particular breed.

Section 16802, page 242, line 5

Shouldn't section be limited to person having jurisdiction or control over bull?

Section 16802—The section should be limited to the person having jurisdiction or control over the bull. The department believes this to be the intent of the section.

Section 16901, page 242, line 26

Shouldn't last sentence be limited to purposes not connected with the transportation of the animal?

Section 16901—We believe it is not the intent of this section to prohibit the placing of cattle within the fences of a railroad for the purpose of transportation by the railroad.

Section 16902, page 242, line 37 and
Section 16903, page 242, line 46

Does "livestock" mean something different from "animal" as defined in Sec. 16302?

Section 16904, page 243, line 1

Does "livestock" mean something different from "animal" as defined in Sec. 16302?

Sections 16902, 16903, 16904—We believe livestock as used here means animals as defined in Section 16302. We think deleting the words "the possession of" in the second line after "control" would clarify the meaning.

Section 16905, page 243, line 14

What is a "properly equipped pen"?

What are "carloads"?

Section 16905—(1) We do not have a definition for "properly equipped pen." The term generally means a pen which is constructed to prevent escape and to prevent harm to the animals. It is provided with water and feed facilities.

(2) "Carloads" means one or more carload lots. It could be written in the singular for clarification.

(3) Suggested language for Section 16905 previously worked out by the subcommittee and agreed upon by Legislative Counsel: "It is unlawful for any officer, agent, or conductor of any railroad in this state, to confine any animals in cars for a longer period than 36 consecutive hours if the animals are being carried or transported by the railroads in carloads. At least every 36 hours the animals shall be unloaded into properly equipped pens for rest, water, and feeding for a period of not less than five consecutive hours."

Section 16908, page 243, line 30

By detaching the semitrailer from the truck it would appear that section would no longer apply. Is this intended?

To whom is request for confinement of 36 hours made? On what basis is it granted?

What is a chute or tail gate of "sufficient size"?

What is a "properly equipped pen"? By whose standards?

Section 16908—(1) We believe that the 28 and 36 hour limitations do not apply to a semitrailer after detachment from a motor truck; however, we believe this to be contrary to the intent and purpose of the section. The proper remedy would be to delete the words "which is attached to a motor truck" following "semitrailers."

(2) We believe the request for 36 hours confinement is intended for the truck operator to make to the owner of the livestock. This part of the section is not appropriate for a person transporting his own animals in his own truck since there is no one for him to make the request of.

(3) We believe a chute or tail gate of "sufficient size" means one capable of handling the animals safely without injury.

(4) See answer to 16905 (1) regarding properly equipped pen.

Section 17069, page 246, line 41

What does "handling" include?

Section 17069—"Handling" as used here means feeding and caring for the animal.

Section 17091, page 246, line 50

What does "handling" include?

Section 17091—See 17069 above for what is included in "handling."

Section 17121, page 247, line 45

What purpose does the definition of "lawful fence" serve? Only the term "good and substantial fence" is used. See Sec. 17122.

Why is "reliable evidence" necessary?

Section 17121—(1) We interpret the intent of the section to be that "lawful fence" means the same as a good and substantial fence. However, the definition of a lawful fence is broader than the negative definition of a good and substantial fence in that the definition of lawful fence includes "cattle guards."

(2) We think the words "reliable evidence" are superfluous and could be deleted for clarity.

(3) Note: During the review of recodification by subcommittee No. 5 it was proposed by the committee and agreed upon by Legislative Counsel that Section 17122 could be improved by using the term "lawful fence" rather than "a good and substantial fence." Such a change would be substantive and would have to be a part of the trailer bill. Accordingly, it was decided to let the section stand as it is.

Section 18352, page 253, line 38

What does "in commerce" mean?

What does "livestock" mean? (Cf. Sec. 18353)

Section 18352—(1) Our interpretation of "in commerce" is the marketing process. The term is superfluous and could be deleted.

(2) We believe "livestock" is intended to include animals as defined in Section 16302.

Section 18353, page 253, line 47

What does "commonly known" modify?

What does "in commerce" mean?

Section 18353—(1) "Commonly known" is intended as used here as a general descriptive term for "stockyard" which is being defined. Thus it would modify "stockyard."

(2) We think "in commerce" means in the marketing process.

Section 18502, page 254, line 24

What does "livestock" mean? Does it mean "animal" as defined in Section 18652? Or animals designated in Sec. 18353?

What does "otherwise" mean?

Section 18502—(1) We interpret "livestock" as used here to mean animals as designated in Section 18353.

(2) "Otherwise" means other than immediate. "Immediate" is not specific but such slaughter usually occurs within 48 hours.

Section 18686, page 256, line 31

Are there "unapproved" municipal inspection departments which are not subject to such control?

Section 18686—There are no unapproved municipal inspection departments subject to such control.

Section 18711, page 256, line 49

What does "locality" mean?

Section 18711—We interpret "locality" to mean in the general area nearby to premises where the livestock is slaughtered. This is a rather indefinite term but has not constituted a problem.

Section 18712, page 257, line 3

Must animals be both produced and slaughtered on the same property?

What does vicinity mean? Does it differ from locality?

Section 18712—(1) We do not interpret the section to mean that the cattle must be produced and slaughtered on the same property. However, to come within the exemption, the slaughtered animals must be from the herd of the producer at the place where slaughtered.

(2) We think "vicinity" means the same as "locality," Section 18711. See that section for comment.

Section 18715, page 257, line 46

What is an "approved municipal inspection"?

What is "county inspection" in view of Sec. 18658?

Section 18715—(1) We interpret "approved municipal inspection" to mean "municipal inspection" as defined in Section 18658 which is approved by the director.

(2) Our interpretation of "county inspection" as used in this section is the meat inspection department of a county included in the definition of "municipal inspection", Section 18658.

Section 18716, page 258, line 6

What is "approved municipal inspection"?

Section 18716—(This number used on questionnaire. However, question does not apply to this section. It should read Section 18715 (c), Page 258, Line 6). See Section 18715 for definition of "approved municipal inspection."

Section 18717, page 258, line 23

What is "approved municipal inspection"?

Section 18717—See answer (1), Section 18715, for meaning of "approved municipal inspection."

Section 18718, page 258, lines 26 and 31

What is "remote"? Remote from what?

What does "immediate vicinity" mean? See Sec. 18712.

Section 18718—(1) "Remote" as used in this section means situated in an out-of-the-way, not readily accessible part of a county.

(2) Remote from municipal areas by either great distances or geographical barriers.

(3) We interpret "immediate vicinity" to include any place nearby the place of slaughter where a sale might be made. See comments for Section 18712.

Section 18751, page 259, line 7

What is "approved municipal inspection"?

Section 18751—See answer (1), Section 18715 for meaning of "approved municipal inspection."

Section 18752, page 259, line 12

What is meant by "recognition"?

Section 18752—We believe "recognition" as used here has the significance of giving status to municpal inspection department where established in place of state or federal inspection otherwise required.

Section 18753, page 259, line 18

What is "general average"?

Aren't establishments either complying with regulations or in violation thereof?

Section 18753—(1) We interpret "general average" to mean the minimum requirements of state inspected plants.

(2) Establishments are a matter of fact either complying with regulations or in violation thereof.

Section 18754, page 259, line 23

By whom is request made?

Only the governing body of the county or city? (See Sec. 18755.)

Section 18754—The request for inspection may be made by a slaughter plant operator as well as by a city or county, if funds are available.

Section 18757, page 259, line 35

On what basis is a special permit issued?

Section 18757—The basis for the issuance of a special permit is the need for the permit and the availability of inspection personnel.

Section 18783, page 260, line 24

Who is required to provide the facilities? Owner? Slaughterer? Or person in possession?

Section 18783—Our interpretation and the practice followed is that the establishment where inspection is conducted is required to provide the facilities.

Section 18761, page 260, lines 9 and 10

What are "California Meat Inspection Regulations"?
Do they differ from general regulations?

Section 18761—(1) California's meat inspection regulations are regulations issued by the director under the authorization of Section 18681.

(2) California meat inspection regulations are a part of the general regulations of the California Department of Agriculture. To avoid confusion, it may be best to delete the title "California Meat Inspection Regulations" and use the one word "Regulations."

Section 18784, page 260, line 31

How is the notice to be given?

Section 18784—The established practice is for the notice to be given either orally or in writing.

Section 18814, page 261, lines 28 and 29

What is an "approved municipal inspection department"?

Section 18814—An "approved municipal inspection department" is an approved municipal inspection—see comment Section 18715.

Section 18815, page 261, line 33

Approved by what standards?

Section 18815—Approved by standards which will assure that the carcass, or part of carcass, cannot be used for human food.

Section 18844, page 262, line 8

Local health authority or department? Cf. Sec. 18843.

Section 18844—Representatives of the local health department and Department of Agriculture make a joint inspection if the application is to the municipal inspection agency; if the inspection is to be by the state agency the plant inspection is by the department alone. We believe reference should be made in this section to Section 18843 because of the word "application" in Section 18843.

Section 18903, page 262, line 35

"Approved municipal inspection"?

Section 18903—See answer to Section 18715.

Section 18904, page 262, line 42

Upon what basis does the director approve establishments?
Is this stamp same as one in Sec. 18813?

Section 18904—(1) Establishments are approved by the director on the basis of Sections 18658, 18753, 18783, 18845, and state building standards.

(2) The stamp "cal. approved" is the same as the one specified in Section 18813.

Section 18973, page 266, line 30

Does "destroy for food purposes" differ from "render unfit for human consumption" in Sec. 18942?

See Sec. 18761.

Section 18973—"Destroy for food purposes" differs from "render unfit for human consumption." Food rendered unfit for human consumption can be decharacterized and used as animal food. To destroy for food purposes under definition of food in Section 26450, California Health and Safety Code, means to render unfit for food for man or animal.

Section 18974, page 266, line 36

Does "destroy for food purposes" differ from "render unfit for human consumption" in Sec. 18942?

Section 18974—See answer to Section 18973.

Section 19002, page 267, line 23

What are "sufficient records"?

Must they contain more than what is required by Sections 18552 and 18554?

Section 19002—(1) We interpret "sufficient records" to mean the date of processing, the amount and kind of meat processed with the name and address of the producer or owner.

(2) There are no Sections 18552 and 18554, thus we cannot answer the query.

Section 19291, page 269, line 38

Upon arrival where?

Section 19291—"Upon arrival" has been interpreted by the department to mean any of the following: at the port of entry, on the docks, a cold storage warehouse where delivered upon arrival, or an official establishment where first presented for inspection.

Section 19295, page 270, line 10

What does "cut for retail" mean?

Section 19295—The department interprets "cut for retail" to mean to cut at a retail market into consumer cuts such as steaks, chops, roasts, etc., or in the case of foreign meats used for producing meat products, it means cut or ground or otherwise prepared for meat products.

Section 20151, page 272, line 7

What are "livestock operations"?

Section 20151—We define livestock operations to mean "breeding, growing, producing, and marketing livestock."

Section 20172, page 272, line 17

When do the regulations then become effective?

Does the failure to publish the regulations preclude them from becoming effective?

Who determines "general circulation?" Cf. Secs. 6000, 6020, Gov.C.

Section 20172—(1) The regulations become effective in accordance with the terms of the Administrative Procedure Act. Publication is made in a stock journal on or before the effective date.

(2) We think the intent of the section is that a regulation is not valid unless published in a stock journal of general circulation.

(3) The director determines "general circulation."

Section 20222, page 272, line 51

Is this a criminal penalty?

To whom is it paid?

Section 20222—(1) This is in the nature of a civil penalty, generally paid without court action. It also is collected in connection with a criminal prosecution. (2) The penalty is paid to the department.

Section 20251, page 273, line 7

What basis for determining amount less than $500?

Section 20251—The basis for determining the amount less than $500 is within the discretion of the court, determined by the facts of the case.

Section 20437, page 275, line 51

How renewed?

What effect on Sec. 20436?

Section 20437—The notice is renewed in the same manner as the original notice is given pursuant to Section 20435.

Section 20470, page 277, line 39

How is the chairman selected?

Section 20470—The chairman of the board is selected by the board.

Section 20601, page 278, line 7

Is this section obsolete?

Section 20601—This section is obsolete and should be deleted.

Section 20608, page 278, line 42

Is possession intended as prima facie evidence that the owner branded the cattle or only that the possessor so branded the cattle?

Section 20608—We interpret the intent of this section to be that it applies to the person in possession of the animal or the owner of the animal whichever is in control of the animal.

Section 20664, page 279, line 49

Is any signature required if the applicant is 21 or over?

Section 20664—As a matter of practice, a signature is required for an applicant over 21, although not specified in the law.

Section 20668, page 280, line 21

Is "breeching" sufficiently definite? See Webster's International Dictionary 2d Ed.

Section 20668—The word "breeching" is familiar to the industry and means the area covering the left and right buttocks.

Section 20694, page 281, line 1

Necessary in view of Sec. 20664, subd. (d)?

Section 20694—This section is unnecessary and could be deleted.

Section 20700, page 281, line 35

Should it be the brand certificate that is canceled rather than the record of the brand?

Section 20700—In our opinion the intent of the section is to permit the cancellation of a recorded brand. We suggest the following language for clarification: "Any recorded brand may be canceled at any time upon the written request of the person in whose name it is recorded." (Cancellation to include the brand registration certificate as well as all other records of the registration.)

Section 20701, page 281, line 39

Should section refer to brand certificates, rather than "brands," which have been forfeited or canceled?

Section 20701—We interpret the section to refer to records of brands registered and suggest the following language for clarification: "The records of brand registrations which have been forfeited or canceled for more than five years may be removed from the files and destroyed." (Cancellations to include the brand registration certificate as well as all other records of the registration.)

Section 20753, page 282, line 38

Is it the payment of the fee or payment plus recordation?

Why not provide "A recordation is valid for one year"?

Section 20753—(1) We interpret the meaning to be that it is the payment plus the recording which gives the right.

(2) The recordation is not necessarily valid for one year since it is valid only for the balance of the calendar year in which recorded.

Section 20792, page 284, line 7

How are "interested persons" determined?

Section 20792—Interested persons are those owning an interest in the brands in question.

Section 20797, page 284, line 40

Is the director required to hold any sort of hearing? If so, what procedure, if any, is he required to follow?

Section 20797—The director is not required to hold a hearing on the appeal provided by this section. If the situation warranted it, he would hold a formal investigational type hearing.

Section 21059, page 287, line 11

What does "where sales of cattle are held" modify?

Section 21059—Our opinion is that "where sales of cattle are held" is intended to modify "any cattle sale market." We suggest the deletion of these words to clarify the meaning.

Section 21143, page 288, line 43

If initiated by an individual, does such inspection apply only to that individual?

If not, what is the significance of Sec. 21141?

Section 21143—We interpret the language to mean that full point-of-origin inspection applies to anyone who transports cattle out of a point-of-origin inspection area. However, it has been the practice to establish an area by regulation after a hearing and only upon the request of a substantial number of producers in the proposed area who would be affected.

Section 21287, page 293, line 5

What does "market" mean?

Section 21287—To more clearly state the intent of subdivision (b) we suggest that "public salesyard" be substituted for "market," the last word of the section. This is our interpretation of "market" as used here.

Section 21455, page 295, line 9

What does "marketed" mean? "Sold"?

Section 21455—The term "marketed" does not necessarily mean sold. It means the normal marketing processes which usually involve a sale at one or more points in the process.

Section 21457, page 295, line 33

What does "partially tanned" mean?

Section 21457—We interpret "partially tanned" to mean that point in the final tanning process which would destroy the evidence of inspection.

Section 21531, page 296, line 17

Is "conveyance" limiting language?

If not, should section apply to any person?

Section 21531—We do not interpret "conveyance" to the limiting language. We think the section should apply to any person. Suggested language: "Unless the shipment is released pursuant to Section 21532, no person shall receive for transportation or transport any hide or carcass, until it has been inspected, and the person has been furnished with duplicate brand inspection certificates that are signed by an inspector which show all of the following:

(a) Any brands and marks.
(b) The names of the shipper and consignee.
(c) The origin and destination of the shipment."

Section 21704, page 298, line 20

What then is the effect of such failure? Cf. Sec. 21702.

Section 21704—The failure to give a written bill of sale limits the ability of the buyer or donee in establishing his right of ownership. Such failure is a violation on the part of both buyer and seller pursuant to Section 21702.

Section 21732, page 299, line 15

What is in the "vicinity of such premises"?

Section 21732—We interpret "vicinity" to mean the general area nearby the premises of the sale. The term is somewhat indefinite and difficult to clearly define.

Section 21851, page 302, line 14

What defines limits of "towns" and "villages"?

Section 21851—We would interpret "towns and villages" to mean centers of population or groups of houses, large or small, other than an incorporated city. The limiting factor is the absence of groups of houses.

Section 21881, page 302, line 32

Is this section only applicable to collisions?

If so, should it be reworded to reflect this?

Section 21881—Our interpretation of the intent of this section is that it is applicable to killing or injury of animals by railroad equipment. If the word "collision" does not reflect this meaning, it should be so worded.

Section 21884, page 303, line 1

What if report is to the owner? Cf. Sec. 21883.

Section 21884—If the telephone report is to the owner or brand inspector, the confirmation should go to the same person. Suggested language: "Reports by telephone shall be confirmed within 24 hours by telegraph or mail to the owner or to the office of the sheriff, constable, or brand inspector, whichever was given the telephone report. A copy shall be sent to the bureau."

Section 21885, page 303, line 5

See Query to Sec. 21884.

Section 21885—The ultimate intention of Sections 21881 through 21885 is to notify the owner. One report to the owner is sufficient.

Section 22002, page 303, line 31

What does "in small numbers" mean?

Does the person who receives the meat have to be a person who is presently offering it for public consumption or is he a person who may do so?

Section 22002—Our interpretation of "in small numbers" means occasional slaughter primarily for his own consumption and not as a business operation. This is an exemption from the requirements for a slaughterer's license and is not intended to permit any such meat to be offered for public consumption in any instance.

Section 22033, page 304, line 50

What standards for such regulations?

Section 22033—The standards would include the requirements of subdivisions (a) and (b) of Section 22034.

Section 22034, page 305, line 1

What procedure governs the hearing?

Section 22034—The hearing procedure is governed by the Administrative Procedure Act.

Section 22036, page 305, line 16

By what "periods" of the current calendar year?

Section 22036—We believe the section is intended to authorize the licensee to operate from the date of the issuance of the license to the end of the calendar year in which issued. Suggested language: "The bureau shall issue to every applicant, who complies with this article, a license to slaughter cattle and sell the meat of such cattle from the date of issuance to the end of the current calendar year."

Section 22048, page 307, line 7

The bureau "may" transfer without cost, but may it charge for such a transfer, and on what basis?

Section 22048—We believe the bureau is not authorized to make the charge for the transfer of the license.

Section 22082, page 307, line 51

Isn't a peddler a retailer?

If not, what is the distinction?

Section 22082—We interpret peddler to mean the same as retailer—one who sells to the consumer and not for resale.

Section 22084, page 308, line 22

What is the definition of such a "peddler"?

Section 22084—See comment regarding Section 22082.

Section 23001, page 309, line 7

What are "livestock operations"?

Section 23001—The department's interpretation of "livestock operations" as used here is that it means the growing, producing or handling of livestock at state or county institutions.

Section 23091, page 310, line 17

What is the basis for determining amount of penalty?

Section 23091—It is within the discretion of the court to determine the penalty, based on the facts of the case.

Section 23802, page 315, line 40

Then what is the effect of the failure?

Section 23802—See comment for Section 21704 for effect of failure to give a bill of sale.

Section 23951, page 316, line 37

What does "neighbors" mean?

Section 23951—"Neighbors" refers to persons living in the immediate vicinity.

We think Sections 23951 through 23957 should be repealed. They serve no present purpose. Licenses have not been issued for two years. Repeal was attempted in 1961 (SB 422) but was not accomplished because of strong opposition.

Section 24501, page 318, line 8

What does "livestock operations" mean?

Does it include raising of poultry?

Section 24501—"Livestock operations" means the growing of livestock and includes necessary activities in connection with growing. As used here, it includes raising of poultry and should be so stated.

Section 24661, page 319, line 45

What does "unnecessary" mean?

Does it apply to filth and contamination, as well as dirt?

Section 24661—"Unnecessary" means all that can be eliminated or avoided by good processing techniques.

"Unnecessary" applies to filth and contamination as well as dirt.

Section 24682, page 320, line 11

How is notice given? Is actual notice required?

Section 24682—We interpret the meaning to require actual notice. In practice this is accomplished by mailing a notice to each person licensed.

Section 24712, page 320, line 48

What is the standard for the approval by the director of out-of-state requirements?

Section 24712—The standard for the approval of out-of-state requirements is based on the California law and regulations.

Section 24713, page 321, line 5

What does "produced" mean? See definition of "producer," Sec. 24660.

What does the term "farmers market" mean?

"Employ" for any purpose, or only in production of poultry?

What does "unforeseeable exigencies" mean?

Section 24713—(1) We interpret "produced" as used here to mean the same as grown or raised.

(2) "Farmers market" means a marketplace usually in a city where farmers are provided with a stall or booth to sell their products direct to consumers.

(3) "Employ" means only in the production of poultry.

(4) "Unforeseeable exigencies" means unpredictable situations such as the illness or incapacity of a member of his family.

Section 24714, page 321, line 23

What does "produced" mean? See definition of producer, Sec. 24660.

Section 24714—See 24713 for meaning of "produced."

Section 24742, page 321, line 34

Is a separate license issued for each plant if more than one plant operated by same person?

Section 24742—A separate license is issued for each plant.

Section 24749, page 322, line 16

What is "major reconstruction"?

What is the standard for the director to approve or disapprove plans?

What is the effect of approval or disapproval?

Section 24749—(1) We have defined "major construction" to be construction other than that associated with normal or routine maintenance activities. Administrative Code, Title 3, Section 1200(y).

(2) The standard for the approval or disapproval of plans is stated in regulations.

(3) The effect of approval of the plans would be to permit the issuance of the license assuming other requirements are met. Disapproval of the plans would preclude the issuance of the license until the defects were corrected.

Section 24772, page 322, line 45

What regulations?

Section 24772—Regulations referred to are those authorized in Section 24681 and Section 24991, regarding poultry plant sanitation and poultry meat wholesomeness.

Section 24960, page 324, line 19

What is "eating place"?

Section 24960—We interpret "eating place" to mean a restaurant or any similar place where meals are sold to the public.

Section 24963, page 324, line 42

What does "serious" mean?

Sec. 24963—The term "serious" as used here means destruction of the flesh to such an extent that the meat would be unpalatable or aesthetically unacceptable.

Section 24991, page 324, line 50

What is the standard for adoption of the regulations?

Section 24991—The standards for the adoption of regulations are found in the definition of "wholesome," Section 24963, and in federal regulations as provided in Section 24992.

Section 24997, page 325, line 39

What is the method of the appeal? And its effect?

Section 24997, page 325, line 39—The standards for the adoption of the regulations are found in Articles III through VI, inclusive, commencing with Section 25021.

Section 25022, page 326, line 15

What is the standard for approval by the director of "out-of-state requirements"?

Section 25022—See answer to Section 24712.

Section 25023, page 326, line 17

See Sec. 24713.

Section 25023—See answer to Section 24713 and 24714 for the meaning of "produced."

Section 25024, page 326, line 36

What does "produced" mean? See definition of "producer," Sec. 24660.

Section 25024—See answers to Sections 24713 and 24714.

Section 25062, page 328, line 10

What powers are granted to the director by this provision?

The powers of an "agency"?

Section 25062—It is not clear what powers are granted. Generally speaking, the chapter imposes limitations or conditions rather than grants powers. The "director" is included within the definition of "agency" in the Administrative Procedure Act.

Section 25126, page 329, line 29

What standard shall be used by the director in approving the methods?

Section 25126—Standards for approving the method are found in the definition of "marked" and "mislabel," Section 24954 and Section 24955.

Section 25409, page 330, line 50

If "giblets" are excluded, does it include other entrails? Or only those considered edible?

Section 25409, page 330, line 50—We do not consider the definition of poultry meat to include any of the carcass other than the parts considered edible.

Section 25703, page 334, line 26

See Secs. 24713 and 25023.

Section 25703, page 334, line 26—See answer to Section 24713.

Section 25704, page 334, line 45

What does "produced" mean?

Section 25704, page 334, line 45—See answer to Section 24713 for meaning of "produced."

Sections 25852 through
Sections 25856, page 335, line 19 et seq.

Are these descriptions sufficiently definite to meet constitutional requirements? See *In re Newbern* (1960), 53 Cal. 2d 786, 792.

Section 25852 through Section 25856, page 335, line 19 et seq.—These descriptions are adequate for the purposes of administration and enforcement of the act. We cannot say with certainty that all of the descriptions are sufficiently definite to meet constitutional requirements in a court action.

Section 25857, page 337, line 5

What standards are to be followed in exercising such authority?

Section 25857, page 337, line 5—The standard used in the adoption of regulations are the U.S.D.A. class designations and grade specifications as required by Section 25857.

Section 26005, page 338, line 12

What is the definition of "poultry part"?

Section 26005, page 338, line 12—We interpret "poultry part" to mean any edible and identifiable part of poultry meat.

Section 26008, page 338, line 41

What is an "institution"?

Section 26008, page 338, line 41—We interpret "institution" to mean any publicly owned establishment where food is prepared for human consumption but is not offered for sale.

Section 26401, page 339, line 13

Is raising poultry engaging in such "livestock operations"?

Section 26401—Same as Section 24501.

Section 26552, page 340, line 7

What does "operating as" mean?

Section 26552—In our opinion "operating" means engaged "in business."

Section 26554, page 340, line 20

What does "production purposes" mean?

Section 26554—"Production purposes" is interpreted by us to mean for the production of eggs or breeding purposes.

Section 26603, page 341, line 6

What happens to the poultry after seizure?

Section 26603—The procedure after seizure is not specified in the law. This needs to be clarified before any seizures are made under this chapter. This law, "Chapter 2, Part 3, Sale Possession and Transportation" was enacted in 1935 to stop poultry thefts. It has never been found necessary to implement the act with funds for administration and enforcement.

Section 26803, page 342, line 17

What is significance of last sentence since "chemical preservatives" not otherwise used?

Section 26803—"Chemical preservatives" is interpreted by us to mean the same as "spoilage retardant."

Section 27003, page 343, line 33

What does "poultry meat food products" mean?

Section 27003—"Poultry meat food products" in our opinion means processed products in which poultry meat is used, such as "chicken soup," "chicken tamales," etc.

Section 27202, page 344, line 50

What does "main" mean?

Section 27202—We think "main" means the "chief" ingredient or the "principal" ingredient.

Section 27231, page 345, line 5

What does "grown or raised" mean?

Is there a distinction between the two terms?

Section 27231—"Grown or raised" are nearly synonymous. As used here there is no distinction. It means brought to some degree of maturity by natural development.

Section 27232, page 345, line 10

See Section 27231.

Section 27232—See answer to Section 27231.

Section 27514, page 346, line 27

What does "lot" mean?

Section 27514, page 346, line 27—See Section 12601 for definition of "lot."

Section 27518, page 346, line 49

What does "but little" mean?

Section 27518, page 346, line 49—The meaning of "but little" is not clear. The industry is planning to clarify this definition.

Section 27520, page 347, line 5

"Mixed rot" is not a defined term. What does it mean? Could it be omitted and "addled" used alone?

"Green white," "embryo chick," "sour eggs" and "musty eggs" are not defined terms. What do they mean?

Section 27520, page 347, line 5—"Mixed rot" could be omitted and "addled" used. "Green white," "embryo chick," "sour eggs" and "musty eggs" are trade terms and are understood by the industry.

Section 27530, page 348, line 12

What does "slightly" mean?

Section 27530, page 348, line 12—"Slightly" means faintly.

Section 27551, page 348, line 25

What are "other . . . officers"? Other officers charged with the enforcement of health regulations?

Section 27551, page 348, line 25—The "other officers" are city and county health officers but they have not exercised the authority.

Section 27555, page 349, line 7

What does "pack" or "lot" mean?

Section 27555, page 349, line 7—We think "pack" as used here is intended to mean a "lot" which bears a particular brand or label.

See Section 12601 for definition of "lot."

Section 27556, page 349, line 12

What does "lots" mean?

Section 27556, page 349, line 12—See Section 27555.

Section 27588, page 350, line 44

Is provision (subd. (b)) re grade C properly a tolerance or is it an exception?

Section 27588, page 350, line 44—It is an exception.

Section 27589, page 351, line 4

What does "lot" mean?

Section 27589, page 351, line 4—See Section 12601 for definition of "lot."

Section 27612, page 351, line 20

What does "localized" mean?

Section 27612, page 351, line 20—"Localized" means not more than $\frac{1}{8}$ inch in any direction.

Section 27617, page 352, line 26

What does "lot" mean?

Section 27617, page 352, line 26—See Section 12601 for definition of "lot."

Section 27674, page 353, line 14

What are "institutions"? Labor camps?

Section 27674, page 353, line 14—"Institutions" are rest homes, hospitals, schools, correctional establishments, etc.

"Labor camps" are camps operated by labor contractors or employers where meals and housing are supplied to employees.

Section 27678, page 353, line 47

What is the standard for the director to find that an "emergency" exists?

Section 27678, page 353, line 47—The standard is something which prevents the normal marketing of eggs.

Section 27702, page 355, line 5

Is this the proper place for the "hatchery test" provision?

Section 27702, page 355, line 5—The incubator egg exception is appropriate here. However, the last sentence should be made a separate section.

Section 27708, page 356, line 4

Should subdivisions (b), (c), and (d) relate to containers or subcontainers rather than eggs?

What are "deceptive" eggs? Should this be more definitive?

Section 27708, page 356, line 4—Subdivision (b), (c) and (d) should relate to eggs in containers or in subcontainers. Deceptive containers would be those which tend to misrepresent the size, quality or grade.

"Deceptive" should be clarified if possible.

Section 27710, page 356, line 44

Should reference be to "licensed" breaking plants? See Section 27517.

Section 27710, page 356, line 44—No, in some instances a ranch grading plant might break eggs commercially although they are not always licensed.

Section 27805, page 360, line 19

How can you "prevent" an existing public nuisance?

Section 27805, page 360, line 19—The intent is to prevent recurrence of the nuisance after its abatement.

"On the relation of" should be changed to "at the request of."

Section 27952, page 364, line 23

What are liquid eggs or egg solids?

What are "other egg products"?

Sections 27952–28095—These provisions are administered by the Department of Public Health. That agency should be contacted to answer these questions.

Section 27991, page 364, line 41

Does "liquefying" refer to "eggs" or "egg products"?

Section 27992, page 365, line 5

What is the standard by which department is to determine whether applicant is "properly equipped"?

Section 27994, page 365, line 13

What does "approved" mean?

Section 28022, page 365, line 32

What would be a "similar opening"?

Section 28023, page 365, line 35

What does "ample" mean?

What does "leakers" mean?

What is a "rejected egg"?

What eggs are to be classified as unfit for human food?

Section 28024, page 366, lines 4 and 8

What does "ample" mean?

What does "so-called sanitary or cove-finish" mean?

What does "adequately" mean?

Section 28025, page 366, line 14

What is an "approved cup"? Approved by whom on what basis?

What does "careful examination" mean?

What classes are referred to by phrase "classes permitted for human food"?

What does "properly dried" mean?

What is a "sanitary mechanical device"?

Section 28027, page 366, line 43

What does "separate and apart" mean? From what?

What does "ample daylight" mean?

What does "et cetera" mean?

Section 28028, page 367, line 2

What "utensils, containers, vats, receptacles, and implements" are referred to? What is included in "et cetera"?

Those used in the washing and sterilizing area or all those used in the breaking plant?

What does "thoroughly" mean?

Section 28030, page 367, line 8

What does "ample," "prompt," "properly," "immediate" mean?

Section 28031, page 367, line 15

What does "adequately" mean?

Section 28085, page 370, line 4

What is the standard for the fixing of the inspection fee?

Section 28088, page 370, line 25

Sold "from" or sold in, the original container?

Section 28094, page 371, line 34

If the product is prepared only, as contrasted to manufactured, whose name is the container to bear since there is no manufacturer for that product?

Section 28095, page 371, line 42

"Inform each purchaser" in what manner? Printed notice? Orally?

Section 29002, page 373, line 12

Is this a meaningful definition? Apiary may include all these items but does this define what an apiary is?

Section 29002, page 373, line 12—We think this is a meaningful definition. The term apiary generally refers to one or more colonies.

Section 29007, page 373, line 34

What is the standard for the director to declare that a disease, parasite, or pest is detrimental to the welfare of the bee industry?

Is it intended to be what he finds to be detrimental?

Section 29007, page 373, line 34—The standard for the director to declare that a disease, parasite, or pest is detrimental to the welfare of the bee industry is that the disease, parasite, or pest is harmful to bees or affects them adversely.

The answer to the second portion of your question is "yes." A disease not presently considered to be detrimental might later be found detrimental. Also, some diseases no known to be present in this country would also be detrimental if discovered here.

Section 29031, page 374, line 3

Should this section be incorporated with Section 29010?

Section 29031, page 374, line 3—This section should not be incorporated with Section 29010. Under conditions peculiar to the county agricultural commissioner relationship with the department, these separate provisions are understandable to all.

Section 29034, page 374, line 15

What are the qualifications for the supervisor and inspectors?

What is effect of such an appointment?

Are they then state employees, agents, or officers?

Section 29034, page 374, line 15—Qualifications for the supervisor and inspectors are established by the State Personnel Board. Both are state civil service positions.

Section 29035, page 374, line 19

What is purpose of first clause of this section in view of Sections 29031 and 29034?

Section 29035, page 374, line 19—Certificates of apiary inspection for bees and used bee equipment moved to other states must be signed by a state apiary inspector appointed under Section 29034, or an ex officio state apiary inspector authorized under Section 29035.

Section 29036, page 374, line 24

How is qualification of state inspector determined?

Are some qualified and others unqualified?

Section 29036, page 374, line 24—All state apiary inspectors are qualified by state civil service examination and appointment.

Section 29061, page 374, line 41

Isn't "used hive" by definition an "appliance"? See Sec. 29003.

Is it used hives or used appliances or any appliance used or not? See also following sections using same phrase.

Section 29061, page 374, line 41—Yes. Used hives by definition are appliances. Only used hives and "other used" appliances should be covered. We have proposed in the Trailer Bill to add the words "other used" before the word "appliances" in Section 29061, page 374, line 41. We request that the same change be made in Sections 29063, 29091, and 29097.

Section 29091, page 375, line 39

What does "package bees" mean?

Sections 29091, 29094, and 29095—"Package bees" means bees transported without comb.

Section 29096, page 376, line 48

What does "severe winters" mean?

Section 29096, page 376, line 48—"Severe winters" means places where low temperatures make it impossible to inspect bees before April 1.

Section 29099, page 377, line 6

Does inspector take physical possession?

Who is liable for any damages during such holding?

Section 29099, page 377, line 6—The inspector does not take physical possession. The owner or bailee is responsible for any damages during any holding.

Section 29122, page 377, lines 38 and 42

See Section 29091.

What is "current inspection season"?

Section 29122, page 377, lines 38 and 42—"Package bees" means bees transported without comb.

The "current inspection season" for most areas is from March through September in any calendar year.

Section 29125, page 378, line 14

Which frames are "associated" with the comb?

Section 29125, page 378, line 14—Frames "associated" with the comb are the frames which hold the comb.

Section 29127, page 378, line 31

What is a "summary manner"? How does it differ from simply destroying?

Section 29127, page 378, line 31—We feel that "summary manner" specifically authorizes simply destroying without formal proceedings.

Section 29159, page 380, lines 9 and 13

What is "scorching"?

What is the standard for the approval of incinerators by the director?

Section 29159, page 380, lines 9 and 13—"Scorching" means to burn the surface with a flame or heat without consuming by fire. The standard for the approval of incinerators by the director is being capable of completely reducing any combustible, diseased material to an ash.

Section 29192, page 381, line 19

What is the standard for the specifications of the director?

Section 29192, page 381, line 19—The standard for the specifications of the director is an enclosure so constructed as to prevent entry or access to bees.

Section 29193, page 381, line 27

See Section 29192.

Section 29193, page 381, line 27—Same as for Section 29192.

Section 29218, page 382, line 43

What is difference between "exposed to bees" and "exposed to robbing by bees"?

Section 29218, page 382, line 43—This is a very poorly worded section, and we are proposing in the Trailer Bill that it be changed to read: "Any hive or appliance which contains any comb which is not occupied by a live bee colony, and that is accessible to bees, constitutes a public nuisance."

Section 29219, page 382, line 49

What constitutes "open air feeding"?

Section 29219, page 382, line 49—"Open air feeding" is the placing of honey in the open for bees.

Section 29245, page 383, line 26

Are both (a) and (b) required, or only (b) if the county or city has provided by ordinance for the identification of apiaries?

Section 29245, page 383, line 26—Only (b) is required if the county or city has provided by ordinance for the identification of apiaries.

Section 29255, page 385, line 14

Is intent to prevent identification necessary under subdivision (c)? Does "such" refer back to subdivision (b)?

Section 29255, page 385, line 14—Intent to prevent identification is not necessary in subdivision (c). "Such" does not refer back to (b). We suggest deletion of the word "such" in line 14.

Section 29402, page 385, line 32

What does "comb" mean in this chapter? See Section 29006.

Section 29402, page 385, line 32—"Comb" means that part defined in Section 29006 of the Agricultural Code which constitutes the beeswax structure.

Section 29404, page 385, line 41

What does "virtually free" mean?

Section 29404, page 385, line 41—"Virtually free" means free or of very limited occurrence. See "practically free" Section 7021 of the Agricultural Code.

Section 29405, page 385, line 44

See Section 29402.

Section 29405, page 385, line 44—See Section 29402.

Section 29408, page 386, line 5

What does "so superior" mean?

What does "lot" mean?

What does "materially misrepresent" mean?

Section 29408, page 386, line 5—"So superior" means superior by contrast to unexposed portion.

See Section 12601 for definition of "lot."

"Materially misrepresent" means inferior by contrast to exposed portion.

Section 29409, page 386, line 13

See Section 39408.

Section 29411, page 386, line 33

Is this definition necessary? Term is not used in remaining provisions of chapter.

Section 29411, page 386, line 33—The definition of "foreign honey" is not necessary. However, see Section 29643.

Section 29413, page 386, line 41

By including standards in the definition, does this mean if nectar of floral exudations of plants has, for example, 21 percent water, it is not honey and therefore not subject to these provisions? Cf. Secs. 29402, 29677.

Section 29413, page 386, line 41—If the product has 21 percent water, it is not honey and cannot be sold as honey. (Section 29677 (b).)

Section 29419, page 387, line 28

What does "small" mean?

Section 29419, page 387, line 28—"Small comb" would be a comb section approximately 6 x 6 inches.

Section 29531, page 390, line 34

Is this provision necessary? There is no reference in the other provisions to California color standards.

Section 29531, page 390, line 34—This provision is not needed. See Sections 29582 and 29612.

Section 29554, page 391, line 38

What does "carrying" mean?

Section 29554, page 391, line 38—"Carrying" means ability to resist deterioration or spoilage.

Section 29555, page 391, line 44

What does "fail to give consumer satisfaction" mean?

Section 29555, page 391, line 44—"Fail to give consumer satisfaction" means generally undesirable.

Section 29556, page 391, line 46

Is the publication a condition precedent to the standards becoming effective?

Section 29556, page 391, line 46—Publication is a condition precedent to the standard becoming effective.

Section 29559, page 392, line 12

What does "competent testimony" mean?

What does "essential evidence" mean?

Section 29559, page 392, line 12—"Competent testimony" means relevant testimony by a qualified person.

"Essential evidence" means supporting material evidence.

Section 29560, page 392, line 21

What is the standard for the director to rescind, modify, or affirm the emergency standards?

"Appointed" how?

Section 29560, page 392, line 21—The standard is found in Sections 29554 and 29555 of the Agricultural Code.

Section 29617, page 394, line 31

Does this section conflict with Section 29613?

Section 29617, page 394, line 31—Section 29613 modifies Section 29617. To clarify we suggest starting Section 29617 with the following words "except as provided in Section 29613."

Section 29644, page 395, line 29

What does "true to such flavor" mean?

Section 29644, page 395, line 29—"True to such flavor" means conformity of flavor and aroma to predominant floral source as marked.

Section 30502, page 399, line 39

What does "harbors" include? Cf. Sec. 30951.

Section 30651, page 399, line 48

What else is included?

Section 30804, page 401, line 5

What is the standard for the board of supervisors to increase the fee?

Section 30955, page 401, line 45

Does the final exception go to the entire section or to only competitive trials?

What are "sporting purposes"?

Section 31102, page 402, line 11

What does "persistently" mean?

What does "recently" mean?

Section 31104, page 402, line 39

What does "reasonable control" mean? How is he under reasonable control and yet engaged in designated activities?

Section 31106, page 403, line 2

What does "proper persons" mean? What is effect of appointing improper person?

Section 31252, page 404, line 32

Does this conflict with Section 30652?

Section 31508, page 406, line 18

What penalties?

Section 32793, page 411, line 26

What if the director fails to mail a blank to a person who operates a milk products plant or who is a distributor, or if a blank is lost in the mail, is there any duty to report?

Section 32793—Blank forms are mailed out routinely on a monthly basis by the Bureau of Agricultural Statistics. Delinquents are reported to Dairy Service in order that it may contact individuals to secure information by whatever means necessary. There is a duty to report under Section 62581. Reporting under the authority of both sections is coordinated in one report form.

Section 32812, page 412, line 10

What does "manifestly insanitary condition" mean?

Section 32812—"Manifestly insanitary conditions" means obviously, or unquestionably insanitary, such as is described in Section 33453.

Section 32905, page 413, line 23

What is "satisfactory" evidence and presented to whom?

Section 32905—Satisfactory evidence means acceptable to the director. This would require information from a qualified federal official or a recognized government authority of the foreign country.

Section 32909, page 414, line 12

What is the standard for approval by director or for the designation of limits by the director?

Section 32909—The section does not specify a standard, however, only harmless products of a good quality are not specifically prohibited. The director follows the limitations established under either U.S.D.A. or U.S. Food and Drug which designate what additives are considered harmless and acceptable. Limits on neutralizer in ice cream mix and ice milk mix are established by regulations. Section 443, Title 3, Administrative Code.

Section 32910, page 414, line 16

What does this section mean? Could it be more clearly stated?

What does "commonly known" mean?

What does "semi-solid buttermilk" mean?

What is "other milk product"? Different than "product of milk"? Is either defined?

Section 32910—(1) This section means that no fat other than milkfat may be used in a milk product. It would be difficult to state more clearly. Perhaps if the sec-

tion was made to apply to "milk products" and the enumeration of certain individual products were eliminated, it might help.

(2) "Commonly known" does not add anything. The phrase could be deleted without changing the meaning.

(3) "Semi-solid" buttermilk means condensed buttermilk used for animal feed.

(4) "Milk product" is defined in Section 32512.

Section 32915, page 415, line 7

What does this provision mean?

Does it create an implied exception for other wholesale sales?

Section 32915—This enlarges the labeling requirements for milk products and imitation products sold to the retail trade to include bulk milk and cream sold to the wholesale trade and to milk and cream sold by milk products plants for processing. This leaves an exemption for wholesale sales of products other than bulk milk and cream.

Section 32916, page 415, line 17

What kind of commission?

Section 32916—The commission is the one provided for in Section 35922.

Section 32918, page 415, line 27

What does "regularly" mean?

How does "peddled" differ from "sold"?

Section 32918—(1) "Regularly" means daily or frequently in a business enterprise.

(2) In general, "peddled" means the same as sold. However, we think "delivered" would better state the meaning of the section.

Section 33113, page 417, line 29

In subd. (b) what does "recognized standing" mean?

Section 33113—"Recognized standing" is interpreted to mean a veterinary school approved by the Board of Examiners in Veterinary Medicine, Department of Professional and Vocational Standards. Reference needs to be made to the examiniations provided for in Section 33111.

Section 33117, page 418, line 18

What is the standard for determining whether a person is eligible for temporary appointment?

Section 33117—Eligibility for temporary appointment is determined by Personnel Board specifications. The applicant is eligible if qualified for the examination.

Section 33141, page 419, line 7

What does "producer" mean?

What does "distributor" mean?

Shouldn't section refer to the "approved milk inspection service" which shall conduct the inspection?

Section 33141—(1) We interpret "producer" to mean a person who owns or operates a dairy farm as defined by Section 32505.

(2) "Distributor" means any person who operates a milk products plant which processes or handles market milk or market milk products, or who distributes the same.

(3) The first sentence refers to approved milk inspection service.

Section 33143, page 419, line 33

What does "related products" mean?

Section 33143—"Related products" means all market milk products of market milk origin.

Section 33147, page 420, line 5

What is the standard by which the director determines whether or not to hold a hearing?

Section 33147—The code does not provide a standard by which the director determines whether to hold a hearing. He is guided by whether or not there is a valid basis for the protest.

Section 33148, page 420, line 15

Upon what grounds does the director determine whether or not to revoke or amend the designation? See Section 33149.

Section 33148—The director follows the same basis of determining revocation or amendment as noted in page 420, lines 19–21.

Section 33223, page 422, line 6

What does "regularly" mean?

What is "cause" for revocation?

Section 33223—(1) "regularly" means a uniform practice. Probably the meaning would be clearer if the word is deleted.

(2) "Cause" for revocation would be for failure of the products to meet legal standards.

Section 33225, page 422, line 34

Upon what basis is the term of a permit to be determined?

Section 33225—Permits are valid for one year only. There is no need for a basis for determining the term of the permit.

Section 33251, page 423, line 15

What are "related products"?

Section 33251—See Section 33143 for definition of related products.

Section 33261, page 424, line 22

"Shall have access" or "shall be given access"?

Section 33261—"Shall be given access" is preferable to "shall have access."

Section 33263, page 424, line 34

What is the basis upon which the director is to determine whether or not a hearing shall be held?

Section 33263—Answer regarding basis for hearing is the same as for Section 33147.

Section 33264, page 424, line 39

What is the basis for the director to determine that a fee should be charged?

Section 33264—The basis for determining if a fee should be charged is cost and workload figures available to the director on a statewide basis.

Section 33321, page 426, line 18

What is included in "product of milk"? Does it differ from milk product?

Section 33321—We interpret "product of milk" to include any "milk product" as defined in Section 32512.

Section 33451, page 426, line 27

Can dairy farm be deficient without being also unsatisfactory? If so, by what standards?

Couldn't terms be simplified and defined more clearly, or would insanitary alone be enough? See Section 33762.

Section 33451—A dairy farm cannot be "deficient" without also being "unsatisfactory." These terms are adequate. "Insanitary" alone would not be sufficient. "Deficient" and "unsatisfactory" cover requirements related to sanitation such as building specifications.

Section 33452, page 426, line 31

By inference such equipment and area is required unless these qualifications are met. Should this be positively stated?

Section 33452—These requirements are positively stated. See Section 33518 for "milk room," 33519 for "sterilizer," and 33527 for "cooler."

Section 33453, page 426, line 50

What constitutes "contaminated"?

Should it be defined?

Section 33453—We think "contaminated" is adequate and does not need further definition. The dictionary definition of "corrupt," "spoil," "pollute," or "soil" is what is interpreted and understood.

Section 33482, page 427, line 19

How is "same geographical area" determined?

Are the plans and specifications for "buildings" or for "farms"?

Section 33482—(1) "Same geographical area" is a contiguous area with the same climatic conditions throughout.

(2) The plans and specifications are for buildings. Reference should be made to plans provided for in Section 33481.

Section 33511, page 428, line 4

Can farm be any one of three without being all three?

Section 33511—A farm can be deficient or unsatisfactory but not necessarily insanitary.

Section 33514, page 428, line 28

What is distinction between "filthy" and "insanitary"?

Section 33514—"Filthy" means a higher degree of dirt or foul matter than ordinary insanitation.

Section 33517, page 428, line 50

What is meant by in contact with "dairy farm operations"? Bookkeeper, salesman, etc.?

Section 33517—Contact with "dairy farm operations" means the type of contacts made by a herdsman, a milker, a manager, a general laborer. Ordinarily it would not include a bookkeeper or salesman as such.

Section 33519, page 429, line 19

What is included in "its products"?

Section 33519—We interpret "its products" as used here to mean skim milk or cream.

Section 33527, page 430, line 14

Coldest "natural" water supply?

Section 33527—The word "natural" has not been added to Section 33527.

Section 33581, page 431, line 10

"Acted upon" in what manner?

Section 33581—We interpret "acted upon" to mean investigated to ascertain if the deficiencies or insanitary conditions have been corrected so as to meet the requirements of the law.

Section 33701, page 431, line 25

What does "herein" mean? This section?

Section 33701—We interpret "herein" to mean provisions for scoring a milk products plant as provided by regulations authorized by Section 32791.

Section 33705, page 432, line 14

What is the standard for the director to prescribe conditions?

What does "proper investigation" mean?

Section 33705—(1) The standard for prescribing conditions is "does not affect the flavor or quality."

(2) We think proper investigation means "investigation." We suggest "proper" be deleted.

Section 33731, page 432, line 22

What does "extensive" mean?

Section 33731—We interpret "extensive" to mean major or substantial as contrasted with minor.

Section 33732, page 432, line 45

What does subd. (e) mean?

Section 33732—We believe subsection (e) means cold storage rooms with capacity to accommodate all perishable milk or milk products in the plant and equipped so as to have the ability to maintain products at sufficiently low temperature to delay deterioration.

Section 33761, page 433, line 17

Is "insanitary" enough, or should it include "deficient and unsatisfactory"? See Section 33451.

Section 33761—We think "insanitary" is adequate and "deficient" or "unsatisfactory" are not necessary. Article 3 refers to Milk Products Plant Sanitation.

Section 33762, page 433, lines 27 and 29

What is test to determine if fermentation is advanced or not, and is putrefactive fermentation not advance fermentation?

Section 33762—The acidity test is used to determine the state of fermentation "putrefactive fermentation" means rotten or putrid.

Section 33763, page 433, lines 35 and 39

Does "its products" differ from milk products as defined by Section 32512?

What is the standard for approval by the director of a sterilization process?

Section 33763—(1) "Its products" means the same as milk products.

(2) The standard used for approval by the director is the standard established by the United States Department of Agriculture.

Section 33765, page 433, line 48

Is it "otherwise provided" anywhere except Section 33703?

If not, couldn't direct cross reference be used?

Section 33765—Section 33703 is the only exception thus a direct cross reference could be used.

Section 33766, page 434, line 2

"It's products" or defined term "milk products"? Section 32512.

Section 33766—We interpret "its products" to mean milk products.

Section 33774, page 434, line 49

Effectively protected "against" flies or effectively protected to "exclude" flies?

Section 33774—We interpret protected "against" flies to mean protected for the purpose of excluding flies. "To exclude" as a substitute for "against" would probably be a substantive change. If one fly was not excluded it would be a violation.

Section 33775, page 435, line 4

Adequate by what standard?

Section 33775—The standard for "adequate" which is used is a sufficient ventilation to prevent drip and mold growth.

Section 34001, page 436, line 37

Compare last paragraph and subdivision (c) of Section 34292. Clearer expression of standards for approval by director?

Section 34001—We believe the standard in the last paragraph of Section 34292 to be clearer than the last paragraph of this section. A comparable standard to Section 34292 would be to substitute the following in place of the last two lines of Section 34001 "demonstrated to be equally or more effective and is approved by the director."

Section 34002, page 436, lines 45, 46, 47, and 48

How is it possible to determine at the time of pasteurization whether the milk or cream will actually be used for cheese or butter in addition to the intent to so use it?

Section 34002—It is not always possible at time of pasteurization to determine whether the milk or cream will be used for cheese or butter.

Section 34006, page 437, lines 17, 19, and 21

What is a "by-product"?

Section 34006—A "byproduct" is any residual fluid product which may be left after some processing operation has been accomplished.

Section 34032, page 437, line 34

What is definition for "by-product"?

Section 34032—See answer for Section 34006.

Section 34063, page 438, lines 1 and 2

What is the standard for approval by the director of a thermometer device or indicating thermometer?

Section 34063—The standards for approval of thermometers are in the Administrative Code, Title 3, Sections 584 and 585.

Section 34091, page 438, line 16

What does "product thereof" mean? "Milk product" as defined in Section 32512?

Section 34091—We interpret "product thereof" to mean the same as "milk product."

Section 34265, page 440, lines 13 and 19

What is the standard for the department to determine (1) time of test, (2) whether a place is acceptable?

Section 34265—The code does not provide the standard. The standard used is proper temperature and tamper proof.

Section 34531, page 443, line 21

"Product of milk" or defined term "milk product"?

Section 34531—"Milk product" is the appropriate term.

Section 34561, page 444, lines 25 and 28

Are the 7-day periods for return to the owner and of notice to the director the same 7 days or two periods, equaling 14 days in all?

Section 34561—The 7-day periods are separate, equaling a total of 14 days.

Section 34567, page 445, line 41

What does the "punishment herein prescribed" mean?

Section 34567—Punishment herein prescribed means the punishment specified in Section 35281.

Section 34591, page 446, line 14

What is standard for guidance of director in approving design and equipment of milk rooms?

Section 34591—The standard for the design equipment for a milk room are found in Article 3 of Chapter 6 of this division.

Section 34593, page 446, line 41

Should "fluid derivative" be defined?

Section 34593—It would not be essential to define "fluid derivative."

Section 34594, page 447, lines 3 and 5

What is standard for guidance of director or local health authority?

Section 34594—The standards for guidance of the director or local health authority would be reasonable requirements for sanitation in restaurants or places where meals are served.

Section 34621, page 447, line 25

Should list of establishments conform to similar list in Section 34592? Is exception for glass container in conflict with Section 34622?

Section 34621—(1) In general, the lists in each section are intended to cover the same establishment but identical lists are not necessary.

(2) Exception for glass container is not in conflict with Section 34622.

Section 34622, page 447, line 39

Rinsed and drained by whom?

Section 34622—The intent is that the containers be rinsed by the consumer before returning the container.

Section 34624, page 447, line 50

What does "commonly used" mean? Prior to its exclusive use as required by this section?

Section 34624—We believe "commonly used" means any use for dairy products. Usage determines status of storage.

Section 34626, page 448, lines 13, 14, and 15

What does "properly" mean?

What does "separate room" mean? Same as Section 33733? If so, is it necessary?

Section 34626—"Properly" means in accordance with requirements. It could be deleted here for a clearer meaning. "Separate room" means a room apart from other rooms in the milk products plant. It is probably not necessary to be specified here in view of Section 33733.

Section 34655, page 449, line 22

What does last sentence mean?

Section 34655—This means that in case of conflict no question will arise as to what law shall take precedence.

Section 34681, page 449, line 31

"Found" by whom in what proceedings? Since such use is misdemeanor, must the finding be in a criminal action, or condemnation action?

What is an "appropriate" manner?

What is the standard for guidance of the director in prescribing manner in which container is to be cleaned or repaired?

Section 34681—(1) "Found" is intended to mean discovered by an inspector or representative of the department and does not mean a formal finding in a court proceeding.

(2) "Appropriate manner" would be adequate to identify it as condemned until the defect is removed.

(3) The standard for acceptability of the container is found in Section 34623.

Section 34801, page 449, line 44

What does "producer" mean? Same as for purposes of milk stabilization?

Section 34801—"Producer" means a dairy farmer. See Section 32505. "Producer" for milk stabilization is defined in Section 61815.

Section 34802, page 450, line 4

Is "warm air" a contaminant to clean empty containers?

Section 34802—Warm air is not a contaminant, but it may contain contaminants.

Section 34804, page 450, line 19

What does "right end up" mean? Opening end?

Section 34804—Right end up means open end up.

Section 34952, page 450, line 45

In view of the definition of the term "milk products plant" (Section 32513), should some other term be used to describe this license since it also covers imitation ice cream and imitation ice milk places of business?

Section 34952—We do not see any need for any other terms to describe the license. This has been used many years and is well understood.

Section 34954, page 451, line 8

What is "full case"?

Under (c), is the two gallons in one container or any number of containers? Is it in conflict with (a) if sold in "full case" quantities but a full case is less than two gallons?

How does "at a time" differ from "in the same transaction"?

Section 34954—We are recommending that this section be repealed—see Trailer Bill.

Section 35012, page 452, line 11

Should "or place of business" be added to subd. (b)? See Section 34952 (page 450, line 47).

Section 35012—"Or place of business" should be added to subdivision (b) so long as "place of business" remains in Section 35011.

Section 35014, page 452, line 21

Should section also refer to a "place of business"? See Section 34952.

Section 35014—There is no need to refer to "place of business" in this section. For licensing purposes, the need for investigation is limited to an inspection of "plants."

Section 35015, page 452, line 24

See Section 35014.

Section 35015—Same answer as for Section 35014.

Section 35019, page 453, line 4

See Section 35014.

Section 35019—Same answer as for Section 35014.

Section 35072, page 454, line 6

What does "normally" mean?

Section 35072—"Normally" as used here should be deleted. The interpretation is that the license expires on the 31st of December. Use of the word "normally" raises a question as to the certainty of this date.

Section 35137, page 455, line 32

Does the term "licensing" refer to licenses and permits or only to licenses?

Section 35137—We interpret the term "licensing" to refer to both licenses and permits.

Section 35168, page 456, line 34

Is "holding or vat method" well enough defined?

Section 35168—We believe the holding or vat method is not sufficiently defined in the code. The holding or vat method is clearly defined in the Administrative Code, Title 3, Section 584.

Section 35221, page 458, lines 24 and 27

What is "similar frozen product"?

Section 35221—"Similar frozen product" would include quiescently frozen confections and yogurt sherbet, and fruit ice cream.

Section 35222, page 458, line 38

Any product "other" than what product?

Section 35222—"Any other product" may be defined as any milk or imitation milk product not otherwise provided for in this article.

Section 35601, page 461, line 40

Department or director?

Section 35601—"Department" should be "director."

Section 35602, page 461, line 43

What does "properly kept" mean?

Section 35602—"Properly kept" means in such a manner as will maintain good herd health.

Section 35603, page 461, line 47

What is the effect of this provision? Shouldn't section provide what disposition must be made of it?

Section 35603—The effect of the provision is to make clear that unsanitary milk may not be used for human consumption. It is helpful in connection with Section 32763 regarding the marketing of milk unfit for human consumption, with Section 32731(f) regarding the exclusion from the herd animals which produce unfit milk,

or Section 32764 which allows the producer to utilize unfit milk for purposes other than for human consumption. The disposition made is to return the milk to the producer or destroy it. Section 32764.

Section 35751, page 462, line 19

Is it the statement or method and manner which is approved?

What is the standard for approval by the director of methods and manners of adding vitamins?

Section 35751—The statement of the method and manner is required to be filed with the director. The method and manner of additions shall be acceptable to him.

The standard for approval is that only vitamins in amounts not injurious to human health may be used.

The method and manner of additions shall not be in conflict with the vitamin manufacturer's direction; that adequate facilities for measurement shall be available, and amount added per unit of volume of milk shall follow manufacturer's directions and the labeling on the container.

Section 35755, page 463, line 2

Isn't reference to approval of director unnecessary if it refers to the milk inspection service and confusing if it refers to the selling?

Section 35755—Approval of the director should not be deleted. Approval does not relate to selling.

Section 35756, page 463, line 7

Does municipality mean something other than "city" previously used throughout these provisions?

Section 35756—"Municipality" means city as used throughout the division.

Section 35781, page 463, line 19

Should subd. (a) be limited to the time of delivery of the raw milk to consumers?

Section 35781—It is not necessary to limit subdivision (a) to the time of delivery to the consumer. This is covered by Section 35891(c).

Section 35783, page 463, line 31

In view of Section 33527, which controls, if temperature of coldest water is below 46 degrees?

Section 35783—We interpret the 50-degree requirement to control if the temperature of the coldest water is below 46 degrees.

Section 35861, page 465, line 26

Does subd. (e) mean that at the actual time of sale the milk is required to be dated? If so, by whom?

Section 35861—Subdivision (e) is not clear as to the required date on the label—i.e. the date bottled or the date 30 hours after production. The bottler is required to provide the date label.

Section 35862, page 465, line 30

What is the standard for approval by the director of persons or laboratories?

What is the standard for approval of the manner of making the examinations?

How does this requirement, as to disease, differ from Section 33779?

Section 35862—(1) The act does not specify the standard for approval of persons or laboratories. Standards of the local health offices are acceptable. (Sec. 603, Title 3, Administrative Code.)

(2) The Code does not provide a standard for approval of the manner of making the examinations. Standards of the local health officers, or an approved

inspection service which is required to have an inspection under the general direction of a licensed physician are acceptable. (Sections 599 and 603, Title 3, Admin. Code.)

(3) The requirements as to disease in this section is the same as Section 33779.

Section 35891, page 466, line 7

Is "(c)" necessary in view of Section 35781?

Section 35891—Subdivision (c) is necessary with regard to the special temperature requirement. However, the last part of the sentence regarding bacteria count is unnecessary in view of Section 35781.

Section 35892, page 466, line 13

See Sections 35862 and 33779.

Section 35892—See comment on Section 35862 regarding query.

Section 35893, page 466, line 33

Compare with Section 35781?

Section 35893—This section is not in conflict with Section 35781 which has a special bacteria count for "raw" milk.

Section 36001, page 468, line 24

Does the last sentence mean that both the name and address of the distributor and the license number of the original bottler are required to be shown?

If it does, doesn't this conflict with subd. (d)?

Section 36001—We interpret the last sentence to allow the distributor a choice between the name and address of the original bottler or the plant license number of the original bottler together with his name and address. We do not believe this conflicts with subdivision (d).

Section 36121, page 470, line 27

As written couldn't this be interpreted to mean the milk or cream is held for three weeks, since section is directed to specific batch or load of milk or cream?

Section 36121—The department's interpretation is that this section does not mean that the milk or cream is held for three weeks. After three weeks if the milk does not meet the minimum bacteria standard the dairy or plant is degraded and all milk from the dairy or plant is excluded as market milk.

Section 36122, page 470, line 43

What happens to the milk while awaiting the results of these tests?

Section 36122—The milk is allowed to be sold as market milk pending the results of the test.

Section 36124, page 471, line 5

What does "high" mean?

Is this count on specific milk, or on a source of milk? If on a source, is it in conflict with dairy farm sanitation and milk products plant provisions?

Section 36124—(1) "High" as used here means higher than the specified maximum legal limit.

(2) With regard to producer deliveries of milk the count is on source of milk. It is not considered in conflict with farm sanitation or milk product plant provisions, but is a method of determining noncompliance for degrading purposes.

Section 36301, page 471, line 33

"Other form or product"; other than what form or product?

Section 36301—We interpret "other forms or product" to mean any products other than milk or cream, including milk products which are authorized to be made from manufacturing milk or manufacturing cream.

Section 36352, page 472, line 30

What does "smooth" mean?

What is an "undesirable flavor or odor"? Undesirable to whom?

What does "sweet" mean?

Section 36352—(1) "Smooth" means not lumpy or clabbered.

(2) "Undesirable flavor or odor" means abnormal or different from usual so as to be objectionable to a consumer.

(3) "Sweet" means not sour or advanced in acid fermentation.

Section 36353, page 472, line 36

What does "slightly undesirable" mean?

Section 36353—"Slightly undesirable" means "undesirable" to a slight degree to differentiate from other grades.

Section 36354, page 472, line 42

What does "slightly" mean?

What does "distinct off-flavor" mean? "Off" what?

What does "old" mean? Older than what?

Section 36354—We do not have a specific definition of the terms "slightly," "distinct off flavor," or "old." However, these terms are understood by the trade and are used in U.S.D.A. standards which apply to butter and manufacturing cream generally.

Section 36355, page 472, line 47

In view of Section 36302, does this mean it is not to be consumed in any form?

Or what is effect of being not fit for human consumption?

Section 36355—Effect of "not being fit for human consumption" means that it may not be sold or used for products for human food. It may be used for animal feed or for other nonhuman food use.

Section 36601, page 473, line 9

Is this provision intended to vest in the director the duty to adopt quality standards for products defined in portions of the code which do not relate to milk?

If the standards adopted by the U.S. Department of Agriculture for any product are raised higher than the standard adopted by the director, does that nullify the standard adopted by the director?

Section 36601—It is not intended to authorize standards for products defined in other divisions of the code.

If U.S.D.A. standards are adopted which are higher than the director's standards, it would have the effect of nullifying the part of the director's standards which is lower until the director modified his regulations to be equal to or higher than the federal.

Section 36604, page 473, line 34

What does this section mean? If it is intended to refer only to products sold but not produced in California is this meaning clear?

Does a decrease in the standards adopted by the U.S. Department of Agriculture nullify standards adopted by the director?

What does "a like product" mean?

Section 36604—(1) We believe this section to mean that California cannot establish a standard for a product manufactured outside of the state higher than the standard we adopt for the same product produced in this state.

(2) A decrease in standards adopted by U.S.D.A. does not nullify standards adopted by the director.

(3) "Like product" means the same type of product.

Section 36605, page 473, line 43

What definition of "dairy products" is referred to?

What does "comparable" mean?

Section 36605—(1) We interpret "dairy product" to mean "milk product" and suggest the change be made.

(2) "Comparable" means conforming to the same standards of identity and composition.

Section 36636, page 474, line 49

Does the director have any discretion regarding whether or not to issue a special permit? If so, on what standards?

Section 36636—The director would have discretion in issuing the permit. He would withhold the permit if the applicant was not able to meet the standards for the product.

Section 36661, page 475, line 14

What is the standard for the adoption of these standards and labeling requirements by the director?

Section 36661—No standard is provided for the adoption of these standards and labeling requirements. See Section 36631.

Section 36801, page 475, line 36

"Undesirable" by whose standards?

What does "sweet" mean?

What does "official plate count" mean?

Section 36801—(1) "Undesirable" is determined by the director, and means abnormal or different from usual so as to be objectionable to the consumer.

(2) "Sweet" means not sour or advanced in acid fermentation.

(3) "Official plate count" is the accepted method for testing for bacteria. The term is outdated and should be revised to "standard plate count."

Section 36804, page 476, line 8

What is standard for such regulation by director?

Section 36804—The standard for such regulation is based on the need for truth in labeling and advertising of frozen dairy products.

Section 36806, page 476, line 23

What does this mean? Does it mean that ice cream mix or ice milk mix has to weigh the same amount per gallon as ice cream or ice milk? See Section 36865.

Section 36806—Ice cream weight standards is a minimum weight. Ice cream mix contains no incorporated air and could weigh above minimum standards.

Section 36861, page 476, line 31

What is the difference between "sweet butter" of Section 36833 and "wholesome sweet butter made from sweet cream" in this section?

What is basis for approving sweetening or coloring?

Section 36861—(1) There is no difference between "sweet butter" and "wholesome sweet butter made from sweet cream."

(2) The basis for approving sweetening is that it is wholesome and nutritious.

Section 36862, page 476, line 42

Are percentages by weight or volume? (Cf. Sections 36891 and 36892)

Section 36862—Percentages are by weight.

Section 36864, page 477, line 1

Does approval by the director relate to both "stabilizer" and "emulsifier" or only to "emulsifier"?

What is the standard for approval by the director of stabilizers or emulsifiers?

Section 36864—(1) We interpret the meaning to be that approval by the director relates both to "emulsifier" and "stabilizer."

(2) The standards used as the basis for approval by the director are the federal standards.

Section 36891, page 477, line 26

What regulations?

Is this intended as authority to make regulations? On what standards?

Section 36891—The last sentence should be separated from subdivision (d). The wording of the revision limits the use of only one of the enumerated products. We interpret the present law to allow combinations of the stated forms of egg yolks and suggest appropriate language to do this.

We believe this section gives the director the authority to make regulations. The standards are not specified but would be based on quality and wholesomeness.

Section 36892, page 477, line 30

What does "its equivalent in other forms" mean?

What is the standard for the approval of sweetened or unsweetened fruit by the director?

Section 36892—(1) "The equivalent of fruit in other forms" means the equivalent in fruit juices and fruit concentrates.

(2) The standard for approval of fruit is not specified but it would be based upon quality and wholesomeness.

Since the last part of the section was added to Section 36862, we do not see any reason to repeat it in this section.

Section 36896, page 478, line 18

What is the standard for director to adopt such regulations?

Section 36896—The standard for regulations is not stated. However, the basic guide is the truth in labeling for the protection of the diabetic and those who are on a restricted diet. See Section 32914.

Section 36921, page 478, line 24

What is the standard for the approval by the director of sweetening, flavoring, and coloring? See Section 36861 (comment).

Section 36921—The basis for approving sweetening is the same as stated for Section 36861, for flavoring and coloring the standard is its wholesomeness.

Section 36922, page 478, line 35

Are percentages by weight or volume?

Section 36922—Percentages are by weight.

Section 36926, page 479, line 5

What is the standard for the adoption of the regulations by the director?

Section 36926—See Section 36896.

Section 36951, page 479, line 31

What are standards for such approval?

Section 36951—See Section 36921.

Section 36953, page 479, line 42

What are standards for such regulations? (Cf. Section 36957)

Section 36953—Acidity for sherbets are specified in Section 436, Title 3, Administrative Code.

Section 36981, page 480, lines 30 and 34

Standards for approval?

What are "food solids"?

Section 36981—(1) Standards for approval—See answer to Section 36921.

(2) Food solids are any edible food solids.

Section 36983, page 480, line 41

What does "properly labeled" mean?

Section 36983—"Properly labeled" means labeled in accordance with the code or regulations of the director. See Section 32914.

Section 37102, page 481, line 16

What is the standard for the director to establish the manner of scoring butter?

Section 37102—The standard used for establishing the manner of scoring butter is U.S.D.A. regulations.

Section 37103, page 481, line 24

What is the standard for the director to establish the manner and fashion of affixing quality designations?

Section 37103—See Title 3, Article 24. The standard used is that they are accurate and readily seen and understandable to the purchaser.

Section 37132, page 481, line 38

What do the following terms mean? "fresh," "sweet," "clean," "light," "medium," "small," "slight"?

What do "fresh make" and "storage" mean?

Package must be "uniform"? Uniform with what; how?

Section 37132—"Fresh" means newly produced, gathered or made—not stored or preserved. (Webster)

"Sweet" means pleasing to taste, not sour or bitter. (Webster)

"Clean" means free from that which contaminates. (Webster)

"Light" means having little or comparatively little. (Webster)

"Medium" means intermediate in amount. (Webster)

"Small" means little in quantity or amount. (Webster)

"Slight" means scanty or meager amount. (Webster)

(2) "Fresh make" means not stored, newly produced. "Storage" means butter held in storage—not freshly made. (Title 3, Section 687, Admin. Code)

(3) "Uniform" means of the same form with others, alike, consistent. (Webster)

Section 37133, page 482, line 4

What do the following terms mean: "fresh," "fairly sweet," "fairly clean," "flat," "lacking in flavor," "fairly firm," "slight," "light," "medium," "fairly uniform," "slightly gritty"?

What do "fresh make" and "storage" mean?

Section 37133—(1) See comments for Section 31732.

"Fairly sweet" means it permits elevation to a slight degree from the positive "sweet."

"Fairly clean" means same connotation of "fairly" in relation to "clean."

"Flat" means as lacking in natural butter flavor. Title 3, Section 687, Administrative Code.

"Lacking in flavor" means lacking in qualities for flavor.

"Fairly firm" means nearly or almost hard, also described as the antonym of "weak" with "fairly" synonymous with nearly or almost. (Title 3, Section 687, Admin. Code)

"Slight" means detected only upon critical examination. (Title 3, Section 687, Admin. Code)

"Light" means having little or comparatively little. (Webster)

"Fairly uniform" means nearly or almost uniform.

"Uniform" means of the same form with other, alike, consistent. (Webster)

"Medium" means intermediate in amount. (Webster)

"Slightly gritty" means when only a few grains of undissolved salt are detected. (Title 3, Section 687, Admin. Code)

(2) "Fresh make" means not stored, newly produced. (Webster)

"Storage" means butter held in storage, not freshly made. (Title 3, Section 687, Admin. Code)

Section 37161, page 482, line 30

How small is "small portion"?

Section 37161—"Small portion" means the amount of milk constituents normally remaining with the fat in the manufacture of butter. It is impossible in the commercial production of butter to absolutely exclude other constituents.

Section 37401, page 484, line 37

Is this necessary in view of Section 37402?

Section 37401—This section is not necessary. It does not serve any needed purpose.

Section 37402, page 484, line 45

What are standards to be followed by director in adopting such regulations?

Section 37402—The standards for standard of composition are provided in Admin. Code, Title 3, Section 415. The standard or guide for labeling used is the standard provided in Section 37971.

Section 37432, page 485, line 10

What are standards for approval "in writing" by the director? By regulation?

Section 37432—The standards for approval are federal food and drug standards for these agents.

Section 37434, page 485, line 23

What is "its water-free substance"?

Section 37434—When all moisture is removed from cheese, its water-free substance remains.

Section 37462, page 485, line 39

What do the following terms mean? "slightly," "medium," "minimum," "tiny," "aged cheese," "cured cheese," "flavor typical of the variety of the cheese being examined," "huffed"?

Section 37462—"Slightly" means detectable only on critical examination.

"Medium" means intermediate in amount. (Webster)

"Minimum" means antonym of maximum. In relation to cheese the minimum time necessary to develop a typical flavor.

"Tiny" means very small or diminutive. (Webster)

"Aged cheese" means industry accepts one year as line of demarkation between "aged" and "mild." No legal definition.

"Cured cheese" means aging may be done under different storage temperatures than "cured"— a fine line of deterioration.

"Flavor typical of the variety of cheese examined" means a cheddar cheese must have a cheddar flavor—a granular cheese, a flavor of granular cheese, etc.
"Huffed" means enlarged or swollen. (Webster)

Section 37463, page 486, line 13

What do the following terms mean: "definite," "weak," "pasty," "extremely," "firm," "short," "mealy," "minimum," "high," "slightly," "tiny," "unattractive," "solid"?

Section 37463—"Definite" means detected but not intense as used in Title 3, Section 687 of the Admin. Code.
"Weak" means lacking in firmness as used in Title 3, Section 687, Admin. Code.
"Pasty" means on manipulation loses form and assumes "paste" texture.
"Extremely" means readily detectable and intense—very great, exceeding reasonable limits. (Webster)
"Firm" means solid as opposed to fluid.
"Short" means lacking plasticity and tends toward brittleness. (Title 3, Section 687, Admin. Code)
"Mealy" means imparts a granular consistency on the tongue. (Title 3, Section 687, Admin. Code)
"Minimum" means antonym of maximum.
"High" means approaching maximum, intense.
"Slightly" means detectable only on critical examination.
"Tiny" means very small or diminutive. (Webster)
"Unattractive" means lacking in appeal to the consumer.
"Solid" means marked by density or compactness. (Webster)

Section 37464, page 486, line 35

What do the following terms mean: "current," "minimum," "aged"?

What grades are established for cheese?

Section 37464—"Current" means belonging to present time. (Webster) In cheese, in relation to time of manufacture.
"Minimum" means held the least time possible to develop flavor and to comply with legal requirements of Section 37975(a). (Pasteurized or held 60 days.)
"Aged" means in excess of one year as interpreted by the department.
Grades established for cheese may be found in Sections 37462 and 37463.

Section 37491, page 486, line 43

What does the "so-called cheddar process" mean?

What does "characteristic forms" mean?

What is the standard for approval by the director of "characteristic forms"?

Section 37491—(1) "So-called cheddar process" is defined in this section. The word "so-called" could be deleted without loss of meaning.
(2) "Characteristic forms" means the forms usually or commonly used: by trade terminology.
(3) The standard for the director to determine "characteristic form" is not specified. He does accept forms commonly utilized in the trade.

Section 37551, page 487, line 22

What is the significance of stating process as "so-called"? Is it really one of the other defined processes?

Section 37551—"Stirred curd or granular process" means similar to the cheddar process except that the curd is not matted or milled. The word "so-called" could be deleted without loss of meaning.

Section 37571, page 487, line 34

What is the significance of stating process as "so-called"?

What does "characteristic forms" mean? Characteristic at what time in the process or in trade?

Is it no longer this type of cheese if in any other form?

Section 37571—(1) See Section 37551. (The word "so-called" could be deleted without loss of meaning.)

(2) "Characteristic form" means (characteristic of variety)—the curd is placed in a square of muslin, the corners pulled together, tied, the curd rolled as nearly round as possible, an indentation on top is created by string and muslin. The cheese is pressed between boards or in hoops to remove whey.

(3) The director may recognize any form as being "characteristic."

Section 37601, page 487, line 51

See questions on Section 37571.

Section 37601—(1) "Stirred curd or granular process"—see Section 37551. The word "so-called" could be deleted without loss of meaning.

(2) "Characteristic form" means the same as for Monterey. See comments for Section 37571.

(3) See (3), Section 37571.

Section 37641, page 488, line 31

What is the significance of the difference between this definition of "skim milk" and the definition in Sections 38181, 38182?

How does "sweet" skim milk vary from the definition of skim milk?

Section 37641—(1) There is no conflict between this definition of "skim milk" and the definitions in Sections 38181 and 38182.

(2) "Sweet" skim milk does not vary from the definition of skim milk. Skim milk must be "sweet" to comply with the standards for skim milk.

Section 37642, page 488, line 34

What is the intended effect of this provision?

If it is to make it subject to standards of the director (Section 37402) would it be better to so state?

Section 37642—(1) By classifying goat milk cottage cheese as a special variety, it requires the director to establish standards by regulation. Section 37402. The basic guide is the truth in labeling for the protection of the consumer.

Section 37671, page 489, lines 26 and 27

What is the significance of the difference between these definitions and the definitions of Sections 32511, 38181, and 38182?

Section 37671—We do not believe these definitions are in conflict with definitions of Sections 32511, 38181 and 38182.

Section 37672, page 489, line 30

See query to Section 37842.

Section 37672—See answer for Section 37642.

Section 37676, page 490, line 7

What does "sufficient amount" mean?

What does "characteristic flavor of chives" mean?

Section 37676—(1) We interpret "a sufficient amount of" to mean "enough."

(2) Characteristic chive flavor means a distinct chive flavor.

Section 37678, page 490, line 17

Does this section conflict with Section 37676, or aren't chives a vegetable?

Section 37678—This section may be in conflict with Section 37676 if less than 5 percent chives is sufficient to give the characteristic flavor of chives required by that section. However, a special provision is required for chives as 20 percent chives would not be an edible product.

Section 37721, page 490, line 49

See query to Section 37641.

Section 37721—See comment to Section 37641.

Section 37722, page 491, line 4

See query to Section 37642.

Section 37722—See comment to Section 37642.

Section 37726, page 491, line 31

See Section 37676.

Section 37726—See comment to Section 37676 for answer to query.

Section 37728, page 491, line 43

See Section 37678.

Section 37728—See comment to Section 37678 for answer to query.

Section 37751, page 492, line 14

What does "properly prepared foods" mean?

What does "foods suitable for blending with cream cheese" mean? Who is to determine?

Section 37751—(1) "Properly prepared foods" are not specifically defined but is interpreted to mean wholesome foods prepared in a form adequate to produce a wholesome edible product when blended with cream cheese.

(2) "Suitable for blending with cream cheese" is determined by the director on the basis of federal requirements.

Section 37753, page 492, line 42

Who is to determine whether a food "appears better or of greater value"? By what standard?

Section 37753—The director determines whether a food "appears better or of greater value." The standard that is utilized is based on consumer acceptance.

Section 37757, page 493, line 9

Are all ingredients of subdivision (a) of Section 37753 "water retaining"? If so, shouldn't they be so designated?

Section 37757—All of the ingredients listed in subdivision (a), Section 37753, are water retaining. It would improve the wording if they were so designated.

Section 37781, page 493, line 36

Is neufchatel cheese defined?

What does "properly prepared foods" mean?

What does "foods suitable for blending with neufchatel cheese" mean?

Section 37781—(1) "Neufchatel cheese" is defined as a special variety, Title 3, Section 415, Admin. Code.

(2) See answer to query regarding Section 37751.

(3) "Suitable for blending with neufchatel cheese" is determined by the director on the basis of federal requirements.

Section 37783, page 494, line 17

Who is to determine whether a food "appears better or of greater value"? By what standards?

Section 37783—See answer to Section 37753.

Section 37821, page 495, line 43

What does "lots" mean?

What does "suitable" mean? By what standard?

Section 37821—(1) "Lot" means one or more associated individual masses, batches, or parcels of cheese.

(2) We interpret "suitable" to mean "permissible." The standards utilized are those of the Federal Food and Drug.

Section 37973, page 498, line 46

Is this in place of Section 37971 or only exception which should be incorporated in Section 37971?

Section 37973—This section could be incorporated with (b) of Section 37971.

Section 38184, page 501, line 5

What does "distributor" mean? Same as for pricing?

Section 38184—"Distributor" means any person who operates a milk products plant which processes or handles market milk products or who distributes the same.

Section 38231, page 501, line 44

What does "considerable portion" mean? By what standard? See Section 37822.

Section 38231—"Considerable portion" means that amount necessary to reduce the moisture-solids relation to any point above the minimum requirement of 7.9 percent milk fat and 25.9 percent total milk solids. (Title 3, Section 675, Admin. Code)

Section 38241, page 502, line 4

What does "considerable portion" mean? Same portion as for Section 38231?

Section 38241—"Considerable portion" means the same as above for evaporated milk except that no minimum requirements have been established.

Section 38261, page 502, line 12

What does "considerable portion" mean? Same portion as for Sections 38241 and 38231?

Section 38261—"Considerable portion" means a sufficient reduction of moisture to provide a minimum of 18 percent milk solids.

Section 38262, page 502, line 19

What does "number 10 can" mean? By what standard?

Is this milk sold "by" orphan asylums, etc., or "to" such places? On prescription?

Section 38262—A number 10 can is a cylindrical can $6\frac{1}{8}$ inches in diameter and $6\frac{15}{16}$ inches in altitude. See subdivision (g), Section 41501. We do not know if this milk is sold by orphan asylums. We have no record of their sales.

Section 38342, page 503, line 42

What does "proper processing" mean? By what standard?

Section 38342—"Proper processing" means meeting the definition provided in Section 38341.

Section 38362, page 504, line 29

Are the standards intended to apply to dried milk produced by the designated standards? If so, is it clear?

Section 38362—Standards are intended to apply to dried milk production methods. It is clear.

Section 38365, page 505, line 1

What do the following terms mean: "readily," "slight," "sweet," "desirable," "chalky," "cooked," "feed"?

Section 38365—"Readily" means quickly and with ease. (Webster)

"Slight" means detected upon critical examination. (Title 3, Section 687, Admin. Code)

"Sweet" means pleasing to taste, not sour or bitter.

"Desirable" means pleasing to taste, not sour or bitter. (Webster)

"Chalky" means like chalk. (Webster)

"Cooked" means subjected to time and temperature to the extent that the fact is discernable by flavor and odor.

"Feed" means aromatic flavor characteristic of feed eaten by cows. (Title 3, Section 687, Admin. Code)

Section 38367, page 505, line 26

What do the following terms mean: "readily," "slight," "fairly desirable," "bitter," "oxidized," "storage," "utensil," "slight degree," "chalky," "feed," "definite degree," "definite scorched flavor"?

Section 38367—"Readily"—see Section 38365.

"Slight"—see Section 38365.

"Fairly desirable" means worthy of desire with reservations.

"Bitter" means astringent, similar to quinine with puckering taste. (Title 3, Section 687, Admin. Code.)

"Oxydized" means characterized by flavor of oxidized fat.

"Storage" means characterized by lack of freshness discernable in flavor and odor. (Title 3, Section 687, Admin. Code)

"Utensil" means a flavor suggestive of unclean cans, utensils and equipment. (Title 3, Sec. 687, Admin. Code)

"Slight degree" means detected only upon critical examination.

"Chalky"—see Section 38365.

"Feed"—see Section 38365.

"Definite degree" means detectable but not intense. (Title 3, Section 687, Admin. Code)

"Definite scorched flavor" means flavor due to time, temperature, and exposure of product to an intense heat.

Section 38392, page 505, line 46

What does "objectionable" mean? What standard?

Section 38392—"Objectionable" means in relation to flavors, those not characteristic to the product.

Section 38395, page 506, line 12

What do the following terms mean: "moderate," "practically"?

Section 38395—"Moderate" means limited in quantity. (Webster)

"Practically" means not absolute but within reasonable limits—"almost" would be better.

Section 38425, page 506, line 47

What do the following terms mean: "readily," "very slight," "practically," "graininess," "desirable," "chalky," "cooked," "feed," "flat," "slightly"?

Section 38425—"Readily" means quickly and with ease. (Webster)

"Very slight" means a very scanty or meager amount—"very" is redundant. (Webster)

"Practically"—"Almost" means within reasonable limits and would be preferable to "practically."

"Graininess" means imparts a granular consistence when the product is placed in the mouth. (Title 3, Section 687, Admin. Code)

"Desirable" means worthy of wishing for earnestly. (Webster)

"Chalky"—see Section 38365.

"Cooked" means has fine delicate smooth flavor because of heat exposure. See Section 38365.
"Feed"—see Section 38365.
"Flat" means lacks natural flavor of product.
"Slightly" means detectable only upon critical examination.

Section 38427, page 507, line 18

What do the following terms mean: "slight unnatural," "readily," "slight," "reasonably," "fairly pleasing," "Definite"?

Section 38427—"Slight unnatural" means characteristic of color not usually associated with product, detectable on critical examination.
"Readily" means quickly and with ease. (Webster)
"Slight" means detected upon critical examination. (Title 3, Section 687, Admin. Code)
"Reasonably" means to a degree that suffices. (Webster)
"Fairly pleasing" means worthy of pleasing with reservations.
"Definite" means detectable but not intense. (Title 3, Section 687, Admin. Code.)

Section 38428, page 507, line 28

What does "direct microscopic clump count" mean?

What is the effect of deeming nonfat dry milk unfit for human consumption?

Section 38428—"Direct microscopic clump count" is a bacteriological test recognized by the American Public Health Associations as a standard method for the examination of dairy products. The effect of deeming nonfat milk unfit for human consumption is to have it condemned and used for nonhuman food products or destroyed. See Sections 32764 and 32765.

Section 38481, page 508, line 7

Is sterilized milk drink mix anything more than milk drink mix which has been sterilized?

If so, is repetition of standards necessary?

Section 38481—Milk drink mix is different from sterilized milk drink mix. It must be made from market milk. Section 38451. The sterilized product may be made from manufacturing milk.

Section 38522, page 508, line 47

What is the standard for adoption of regulations by the director?

What does "duly called" mean?

Does the director call and conduct the hearing?

What is the effect of the hearing?

Section 38522—The act does not provide standards for the adoption of regulations. See Title 3, Section 448, Administration Code. "Duly called" is interpreted to mean in accordance with the Administrative Procedure Act. The hearing affords interested persons to submit their recommendations or objections to the proposed regulations.

Section 38631, page 510, line 15

What does "portion" mean?

Section 38631—"Portion" means a part of the water. It is not possible to remove all of the water.

Section 38651, page 510, line 41

What does "distinctly differ" mean?

What "other characteristics"?

Section 38651—"Distinctly differ" means at variance to such a degree as to be readily ascertainable.
"Other characteristics" means flavor or composition.

Section 38671, page 511, line 21

How much acidity?

Section 38671—The amount of acidity is sufficient to provide a "distinct lactic acid flavor." This conforms with Section 38701, sour cream dressing.

Section 38703, page 511, line 50

What does "distinctive flavoring" mean?

Section 38703—"Distinctive flavoring" means having the characteristic of onions, cheese, salmon, anchovy or pickle flavor that is imparted to the sour cream dressing.

Section 38731, page 512, line 8

Is this "nonfat milk" different from skim milk? If not, why is term used?

Section 38731—The terms "skim milk" and "nonfat milk" are interchangeable. See Section 38182.

Section 38761, page 512, line 48

Is the one-half of 1 percent a limitation upon only the harmless edible stabilizer or upon all the ingredients which may be added to the product?

Is percentage by weight or volume?

Section 38761—We interpret the one-half of 1 percent limitation to be applicable only to the harmless edible stabilizer and not to other ingredients.

Percentage is by weight.

Section 38763, page 513, line 6

What is the standard for approval by the director of inert harmless gas?

Section 38763—The director uses Federal Food and Drug standards as his guide for approval of harmless gas.

Section 38792, page 514, line 20

What does "other approved form" mean? Standard for approval?

Section 38792—"Other approval form" means other forms than those specified which the director approves. Concentrated yolk is one such form.

Line 21—delete word "from" and add "form."

Section 38903, page 515, line 10

What is "and otherwise" in taste and semblance?

Section 38903—"And otherwise" means characteristics such as body, texture, or viscosity.

Section 38951, page 515, line 45

What if the imitation milk is condensed but not evaporated?

Section 38951—We interpret the adulterated status to apply to both condensed and evaporated if either is below the 7.8 percent fat requirement.

Section 38981, page 516, line 7

Does this cover every possible liquid (including water) which may be used as and substituted for milk or only those products which are imitations of milk?

Section 38981—We interpret the section to include only those products which are imitations of milk and which are intended for human food.

Section 38983, page 516, line 30

What is included in "put up"? How does it differ from manufacture?

Section 38983—We interpret "put up" to mean packaging for the consumer.

Section 38984, page 516, line 38

"Within" the contents?

Section 38984—A copy of the statement referred to in Section 38983 must be placed within an outer package if one or more of the packages are enclosed in an outer case.

Section 38986, page 517, line 9

"Similar institutions" to all those designated or only similar to hospitals?

Sold "by" or "to" orphan asylums?

Section 38986—We interpret "similar institutions" to include similar to all the institutions designated excepting druggists as an institution. See Section 38262 to assure the consumer a wholesome, uniform product that will conform to the standards of the product which it imitates.

Section 39152, page 518, line 3

What is the standard for the director to adopt regulations?

Section 39152—The standards used for the product are Federal Standards, U.S. Public Health, U.S.D.A., or U.S. Food and Drug Standards.

Section 39184, page 518, line 33

What are the standards for such regulations?

Section 39184—See answer to Section 39152.

Section 39211, page 518, line 40

What does "place" mean? See *Market Basket* v. *Jacobsen* (1955), 134 C.A. 2d 73.

What does "or otherwise" mean?

Section 39211—(1) In view of the Market Basket case we have no definition of "place."

(2) "Or otherwise" is interpreted to mean stationary or not on wheels, or easily removable.

Section 39212, page 519, line 1

To what does the prohibition against the use of the various terms or representations relate? Imitation ice cream or ice milk trade names?

What does "place" mean?

Section 39212—(1) The query appears to relate to the terms or representations stated in Section 32912. They relate to such terms or representations for imitation ice cream or imitation ice milk.

(2) See answer to Section 39211.

Section 39214, page 519, line 15

Is "commonly used" sufficiently definite to be meaningful?

Section 39214—We interpret "commonly used" to mean common or ordinary reference to the products. The meaning would be clarified if the words "as such terms are commonly used in the restaurant or soft drink trade" are deleted.

Section 39352 and
Section 39353, page 519, lines 42 and 49

What is the definition for "substitute for butter" or "substitute for cheese"? Cf. Secs. 39432, 39491, 39521.

Sections 39352 and 39353—No definition for "substitute" for butter or for cheese is provided.

Section 39383, page 520, line 25

What is the effect of this section?

Section 39383—This section serves no purpose. We recommend it be deleted.

Section 40501, page 523, line 38

Is this section necessary?

Section 40501, page 523, line 28—The section is probably not necessary. Its purpose is to assure the canning and dried fruit industry that the chapter is inapplicable to industry or trade association investigations and certifications.

Section 40531, page 524, line 8

What are standards for such regulations?

Section 40531, page 524, line 8—"Reasonable fees" is one standard provided. The prinicpal guides used are U.S. grade standards or grades established under the terms of marketing orders.

Section 40702, page 525, line 14

What does "practically all" mean?

Section 40702, page 525, line 14—"Practically all" means not much less than "all" but would allow for flavorings, seasonings, etc., and any permissible additives.

Section 40703, page 525, line 18

What does "good red tomato color" mean?

Section 40703, page 525, line 18—"Good red tomato color" established in 1942, refers to "California Standard Color chart for Canning Tomatoes", and as measured by the Agtron E. (Adm. Code, Title 3, Section 1331)

Section 40816, page 528, line 8

Who are "parties of record"?

Section 40816, page 528, line 8—Parties of record are those canners and growers known to the director to use the station.

Section 40817, page 528, line 25

What are "adequate" facilities? By what standards?

Section 40817, page 528, line 25—"Adequate facilities" means facilities capable of being used for the job as determined by the inspection agency. They are defined by regulations. (See Adm. Code, Title 3, Section 1339.5)

Section 40843, page 528, line 46

What is "the delivery"? (Cf. Section 40846)

Section 40843, page 528, line 46—"The delivery" means all of any individual lot or load delivered.

Section 40844, page 529, line 18

What does "fairly well colored" mean?

Section 40844, page 529, line 18—"Fairly well colored" is specified in the California color chart for canning tomatoes. See Section 40761.

Section 40845, page 529, line 27

Is it 10 percent of "any load" or "the delivery"?

Section 40845, page 529, line 27—It is 10 percent of "any load." A load is not a delivery until it is certified and accepted by the cannery. (Adm. Code, Title 3, Section 1332.)

Section 40846, page 529, line 33

See query to Section 40845.

Section 40846, page 529, line 33—See answer to query on Section 40845 and Adm. Code Section 1332.

Section 40847, page 529, line 36

Does last sentence relate to only a load of tomatoes which is not well-colored?

Section 40847, page 529, line 36—The sentence is not limited in application to only a load which is not well colored. It applies to tomatoes rejected pursuant to Sections 40845 and 40846.

Section 40848, page 529, line 43

What "cross-section"?

Section 40848, page 529, line 43—The intent is that the "cross-section" is at the widest diameter.

Section 40934, page 531, line 47

Who determines "tomato canning season"?

Section 40934, page 531, line 47—The tomato canning season is controlled by weather and growth of the crop. It includes the period of time during each year that tomatoes are being delivered to canneries for processing.

Section 40936, page 532, line 11

What are standards for director determining money should not be returned "for any other reason"? Any other reason making it impracticable?

Section 40936, page 532, line 11—The principal reason for not refunding is the need for a reserve fund with which to start operations the next season.

Section 40963, page 532, line 35

What does "lot" or "load" mean? Should it be defined?

Section 40963, page 532, line 35—"Lot" or "load" or "delivery" are used interchangeably and are interpreted to mean a grower's single delivery. See answer to Section 12601 for definition of "lot" for eggs, and answer to Section 37821 for definition of "lot" for cheese.

Section 41301, page 535, line 10

What if the container is other than "tin or glass"?

Section 41304, page 535, line 32

May this section be deleted as obsolete?

Section 41362, page 536, line 37

Is the delegation to the Secretary of the U.S. Department of Agriculture of the legislative power of the state constitutional?

Is last sentence necessary or has such change to comply already been made?

Section 41391, page 537, line 3

What do the following terms mean: "firm," "reasonably free," "serious for the grade," "reasonably uniform," "foreign disagreeable flavor"?

Section 41392, page 537, line 18

What are the standards for "choice" and "fancy" olives? "Better" than what?

Section 41501, page 539, line 8

What is effect of this provision?

Section 42509, page 542, line 18

Is "virtually uniform" sufficiently definite?

Section 42509, page 542, line 18—We think "virtually uniform" is sufficiently definite.

Section 42510, page 542, line 31

Should there be a differentiation between fruits and vegetables? See Section 43531.

Does the definition include both fresh and dried fruits, nuts, and vegetables? See Section 42508 and other sections which specifically state "fresh or dried."

Section 42510, page 542, line 31—We believe there should be a differentiation between fruits and vegetables. The definition includes both fresh and dried fruits, nuts, and vegetables.

Section 42513, page 542, line 46

What is the standard for determination of palatability? By whom?

Section 42513, page 542, line 46—We do not have a clear cut standard for the determination of palatability. Guides used are research studies and general acceptance for food.

Section 42515, page 543, line 13

What is the standard for determining whether or not a product is "undesirable for human consumption in a fresh state"?

Does this conflict with definition of "mature" in Section 42513? Or is there a category between mature and overripe?

Section 42515, page 543, line 13—We do not have a specific standard. If a product becomes mealy, rancid, or deteriorated, so as not to be acceptable for food, it is "undesirable for human consumption."

Section 42654, page 544, line 17

What does the term "standardization provisions" include? The provisions of this division? If so, shouldn't it so state?

Section 42654, page 544, line 17—The term "standardization provisions" applies to the provisions of this division. It would be desirable to state "this division" rather than "this code."

Section 42681, page 544, line 23

How do these "lots" differ from "bulk lots" as defined in Section 42503?

Section 42681, page 544, line 23—These "lots" differ from "bulk lots" as defined in Section 42503 in that "lot" in this section is broader than "bulk lot" and includes a "bulk lot." "Lot" as used here would be any lot whether packaged or in bulk.

Section 42705, page 545, line 49

What does "consumer satisfaction" mean?

Section 42705, page 545, line 49—The meaning of "consumer satisfaction" is not clear, but is believed to mean minimum standards of quality or maturity or better.

Section 42706, page 546, line 1

Do the emergency standards become effective upon such publication or only after hearing?

Section 42706, page 546, line 1—We believe the emergency standards may be made effective after publication. However, this is not the practice. The practice has been to hold a hearing before making them effective.

Section 42708, page 546, line 18

Who determines what is "essential" evidence?

Section 42708, page 546, line 18—The director determines what is "essential evidence."

Section 42711, page 546, line 31

What does "day appointed therefor" mean?

Section 42711, page 546, line 31—"Day appointed therefor" means the day designated by the director when the emergency regulations become effective.

Section 42733, page 547, line 25

What does "upon proper showing" mean?

Section 42733, page 547, line 25—"Upon proper showing" is not defined. In general, it means a demonstration of need.

Section 42792, page 548, line 34

What is "such lot"?

Section 42792, page 548, line 34—"Such lot" means any lot inspected pursuant to Section 42791.

Section 42794, page 548, line 49

What is a "lot"? Is it a "deputy" commissioner or inspector, or both?

What is a "valid standardization certificate"?

Section 42794, page 548, line 49—"Lot" means a number of associated items. It may be one size or count, or other classification in a group of containers such as one brand or one variety. See answer to Section 12601 for definition of "lot" as applied to eggs. The certificate is issued by an agricultural commissioner, deputy commissioner or inspector.

"Valid standardization certificate" is a certificate issued under terms of Section 42791, 42792, and Sections 1366, and 1366.3 of Title 3 of the Administration Code.

Section 42852, page 550, line 17

What if, rather than a valid standardization certificate, a deputy commissioner holds only valid certificate of office? See Section 42791.

Section 42852, page 550, line 17—The inspector class must hold standardization certificate, but the commissioner or deputy commissioner need hold only valid certificate of eligibility for the office. A valid certificate of eligibility to office held by a commissioner's deputy qualifies him to determine if produce complies with the requirements of the division, the same as does a standardization certificate for an inspector.

Section 42942, page 552, line 12

How does "load" differ from "bulk load"?

Section 42942, page 552, line 12—"Load" differs from "bulk load" in that "load" includes commodities in packages or containers as well as in bulk—whereas bulk means loose in a truck or bin.

Section 42945, page 552, line 45

What does "to remove or dispose of any etc." mean?

Section 42945, page 552, line 45—"To remove or dispose of any" means to move from the place where located when the tag is affixed.

Section 42947, page 553, line 18

What does "consumer type package" mean?

Section 42947, page 553, line 18—"Consumer type package" means a package intended for sale to consumers intact, without being split into a number of sale units.

Section 42972, page 554, line 32

Is (c) an exception to (b)? If so, shouldn't it so state?

Section 42972, page 554, line 32—We do not interpret subdivision (c) to be an exception to subdivision (b). If demand is made under subdivision (b) we would consider it to supersede subdivision (c).

Section 43032, page 556, line 7

How do you condemn a nuisance?

Section 43032, page 556, line 7—The nuisance is condemned by issuance of a notice of noncompliance.

Section 43034, page 556, line 21

Is the lot "held" by the officer?

Section 43034, page 556, line 21—The lot is not actually physically held by the officer—he issues the hold order to keep the lot within his control.

Section 43251, page 558, line 15

What is a "packing plant" as used in (a)?

What is a "dumping ground" as used in (d)?

What is "first processing, grading or packing"?

How are fruits, nuts, and vegetables "prepared" for these conditions?

Isn't there an overlapping in the first paragraph?

Section 43251, page 558, line 15—"Packing plant" as used in (a) means a plant lacking in full facilities to properly complete the processing, grading, packing or reconditioning needed to be done.

A "dumping ground" as used in (d) is a place where waste material is dumped and treated for disposal.

"First processing" is the operation for processed commodities next following the harvesting other than transportation from the harvest field to the point of first processing.

"Prepared" might include loading in bins or other containers for transporting.

Generally there is no overlapping in the first paragraph except for situations such as for lettuce where packing is done in the field.

Section 43281, page 558, line 40

If these commodities are exempt under Section 43251, is a permit necessary?

Is a permit to be used for every hauling from orchard or field under subdivision (e) of Section 43251?

Section 43281, page 558, line 40—The permit is necessary to prevent culls and fruit below minimum quality from finding its way into the trade. A permit is not used for every hauling from the orchard or field.

Section 43282, page 559, line 16

Is it necessary to repeat the same material as already found in subd. (a) of Section 43251?

Section 43282, page 559, line 16—We think it necessary to repeat the material stated in subdivision (a) of Section 43251. That section relates to exemption from standards—this section is concerned with permits.

Section 43285, page 559, line 28

What does "except to the seller and the receiver" mean?

Section 43285, page 559, line 28—The exception means the seller or receiver permit is only valid for county where issued. It cannot be countersigned in other counties.

Section 43287, page 559, line 50

How do "proper and adequate" apply to subds. (c) to (e) of Section 43251? By what standards?

Section 43287, page 559, line 50—"Proper and adequate" must be applied to subdivisions (c) to (e) of Section 43251 on a practical basis. Facilities are numerous and diversified, but they must be such as will assure the commissioner that the products will be utilized for the purposes indicated, and will not be allowed to find their way into channels of trade for human consumption; except in the case where moved for further processing where they will be brought into compliance with standards.

The standards are provided in Section 43251.

Section 43451, page 562, line 5

Is this section necessary? (Cf. Section 43452.)

Section 43451, page 562, line 5—We think the section is necessary. It provides the point of application of the standard containers and standard packs; i.e., "when being packed or placed. . . ."

Section 43484, page 563, line 29

What is a "proper showing"? Standards?

Section 43484, page 563, line 29—A "proper showing" means that only a portion of the experiment was completed and the purpose of the experiment requires more time. The standard is the same as for the original permit. See answer to Section 42733.

Section 43487, page 564, line 1

What purpose does this section serve?

Section 43487, page 564, line 1—The purpose of this section is to make it clear that if more than the specified number of experimental containers are manufactured, that they are only experimental containers and cannot be used.

Section 43511, page 564, line 30

What does "consumer-type container" mean?

Section 43511, page 564, line 30—See answer to Section 42947.

Section 43671, page 575, line 31

What is "used in display"?

Section 43671, page 575, line 31—"Used in display" means to identify items where they are displayed or exhibited to prospective buyers.

Section 43807, page 576, line 32

What does the following term mean: "superficial well healed"?

Section 43807, page 576, line 32—"Superficial well healed" means minor and of no significance.

Section 43809, page 576, line 43

"Insure palatability" by whose standards?

Section 43809, page 576, line 43—See answer to Section 42513.

Section 43832, page 577, line 40

What does an "excess of damage" mean?

Section 43832, page 577, line 40—"Excess of damage" means damage that would normally be considered as a defect. See Section 43911(g) and 43912(b).

Section 43911, page 579, line 20

What do the following terms mean: "appreciably affect," "slightly," "excessively," "superficial," "trace," "slight," "well healed"?

Section 43911, page 579, line 20—We do not have specific definitions or standards for "appreciably affect," "slightly," "excessively," "superficial," "trace," "slight," "seriously discolored or injured," "materially," and "well healed." Therefore, we must rely on dictionary definitions.

Section 43912, page 580, line 1

What do the following terms mean: "seriously detracts," "slight," "seriously discolored or injured," "materially," "well healed"?

Section 43912, page 580, line 1—Same answer as for Section 43911 for "seriously detracts," "slight," "seriously discolored or injured," "materially," "well healed."

Section 43913, page 580, line 35

How does this provision differ from Section 43971? Is it necessary?

Section 43913, page 580, line 35—This section establishes the grades; Section 43971 allows a combination of grades. The provision is necessary.

Section 43915, page 580, line 44

What do the following terms mean: "well grown," "well colored," "normally shaped"?

Section 43915, page 580, line 44—"Well colored" is defined in the Administrative Code, Title 3, Section 1391. Other terms are not defined for the purpose of this chapter so the dictionary definition is used.

Section 43916, page 581, line 4

What do the following terms mean: "well grown," "normally shaped"?

Section 43916, page 581, line 4—See answer to Section 43915.

Section 43917, page 581, line 16

What does the following term mean: "virtually"?

Section 43917, page 581, line 16—"Virtually" is considered to mean nearly all.

Section 43947, page 583, line 1

What is a "current cold storage season"?

Section 43947, page 583, line 1—"Current cold storage season" is the period of cold storage for apples beginning with harvest of each year and continuing until the apples are moved out of storage for sale or other use.

Section 44004, page 584, line 18

Recognized by whom? What standards?

Section 44004, page 584, line 18—Factors of maturity are those recognized by the director. Specific standards are those specified in Section 44031, and Title 3 of the Administrative Code, Section 1392.2.

Section 44031, page 585, line 23

What does "recognized methods" mean?

Section 44031, page 585, line 23—See answer to Section 44004.

Section 44132, page 587, line 45

Does this conflict with Sections 44103 and 44104?

Section 44132, page 587, line 45—There is no conflict, but Section 44103 and Section 44104 are also covered in Section 44131. The provision could be clarified.

Section 44168, page 589, line 36

What is the standard to be followed by the director in approving the grade?

Section 44168, page 589, line 36—The standard is established by regulation. See Administrative Code, Section 1391.5.

Section 44701, page 593, line 40

What do the following terms mean: "badly," "materially"?

Section 44701, page 593, line 40—"Badly" means extensively. "Materially" means substantially.

Section 44703, page 594, line 6

What other markings are required by "this section"? Cf. Section 44812.

Section 44703, page 594, line 6—This section requires only the word "crooks" but other sections would require also name, address, and size designation.

Section 45601, page 600, line 40

What does "poorly netted" mean?

Section 45601, page 600, line 40—"Poorly netted" is defined in Title 3, Section 1404, of the Administrative Code as follows: (a) "Poorly netted" as used in Section 811, Agricultural Code, means the cantaloupe is rejectable if more than 20 percent of the surface area has an absence of netting, also, if more than one-third of the surface area has very flat netting (actual netting shows, but is flat, as compared to absence of netting) the cantaloupe is also rejectable.

Section 45663, page 602, line 31

What does "near" mean?

Section 45663, page 602, line 31—"Near" refers to immediate vicinity. Also, see answers to Sections 5531 and 5704.

Section 45664, page 602, line 42

What does "virtually uniform" mean?

Section 45664, page 602, line 42—"Virtually uniform" means nearly uniform, but with some variation in size.

Section 45833, page 603, lines 38 and 40

Should this provision be consistent in referring to "damage" or "injury"?

Section 45833, page 603, lines 38 and 40—The two terms "injury" and "damage" are synonymous.

Section 45834, page 603, line 46

What does "normal preparation for use" mean? By whom under what conditions?

Section 45834, page 603, line 46—We do not have a specific definition of "normal preparation for use." In general, it means the removal of defects which can be removed practically by removal of skin or peel.

Section 46323, page 610, line 8

What does "near" mean?

What are "consumer packages"?

Section 46323, page 610, line 8—"near" refers to immediate vicinity. See answer to Sections 5531, 5704, and 45663.

The definition of "consumer packages" means a package intended for sale to consumers intact, without being split into two or more sale units. See answers to Sections 42947 and 43511.

Section 46551, page 612, line 47

What does "serious damage" and "abnormal" mean?

Section 46551, page 612, line 47—"Serious damage" means substantial damage. "About normal" as used here means beyond the normal softening of the flesh.

Section 46552, page 613, line 2

What does "light red color" mean? What shade is it?

Section 46552, page 613, line 2—We have a color chart for "light red color." It can be defined in terms of Munsell Color Notations.

Section 46872, page 619, line 2

How deep is "deep"?

Section 46872, page 619, line 2—"Deep" is not specifically defined. It is generally understood to mean below the immediate surface.

Section 46875, page 619, line 17

What does "pronounced" mean?

Section 46875, page 619, line 17—"Pronounced" means definite or distinct.

Section 46880, page 619, line 38

What does "flabby" mean?

Section 46880, page 619, line 38—"Flabby" means not firm or spongy.

Section 46881, page 619, line 41

What does "decided" mean?

Section 46881, page 619, line 41—"Decided" means definite, distinct, or pronounced.

Section 46882, page 619, line 47

What does "decidedly" mean? (Cf. Section 46881.)

Section 46882, page 619, line 47—For the purpose of this section, "decidedly" has been defined to mean "when the protrusion extends an inch or more beyond the normal contour of the fruit". (Administrative Code, Title 3, Section 1416)

Section 46884, page 620, line 11

Does this refer to all of the grapefruit in a container or bulk lot or only the grapefruit in a representative sample?

Section 46884, page 620, line 11—The intent is to refer to the sample as provided in Section 46883.

Section 46916, page 622, line 2

What is "gumming"?

Section 46916, page 622, line 2—"Gumming" means a dark-colored exudation.

Section 46921, page 622, line 31

What does "pronounced" mean?

Section 46921, page 622, line 31—"Pronounced" means definite or distinct. (See answer to Section 46875.)

Section 46926, page 623, line 4

What do the terms "malformed, ridgy, or lumpy" mean?

Section 46926, page 623, line 4—"Malformed, ridgy, or lumpy" are defined by means of photographs. (Administrative Code, Title 3, Sections 1418 and 1418.1)

Section 46927, page 623, line 8

What do terms "malformed" and "definite" mean?

Section 46927, page 623, line 8—For definition of "malformed" see answer to 46926.

Section 46953, page 625, line 1

What does "accelerated in color" mean?

Section 46953, page 621, line 1—"Accelerated in color" means developing pigmentation by use of heat with increased humidity or ethlene gas.

Section 47063, page 631, line 33

What is "near" the point of production?

Section 47063, page 631, line 33—For meaning of "near" see answer given for Sections 5531, 5704, and 45663.

Section 47606, page 637, line 29

What do the following terms mean: "Low," "tender," "very easily"?

Section 47606, page 637, line 29—We do not have specific definitions for the terms "low," "tender," nor "very easily". They are related to the conditions of normal berries.

Section 47121, page 633, line 16

What does "normally used" mean?

Section 47121, page 633, line 16—"Normally used" is the machine generally used for packaging citrus fruits.

Section 47251, page 635, line 9

What do the following terms mean: "plump," "milky," "well developed," "shriveled"?

Section 47251, page 635, line 9—We do not have a specific definition for "plump," "milky," or "well developed." "Shriveled" means an overmature condition.

Section 47422, page 636, line 5

What interpretation? The "foregoing" standards do not provide for any such interpretation.

Section 47422, page 636, line 5—The interpretation meant here is the necessary interpretation of meaning in the enforcement of the standards.

Section 47602, page 637, line 11

What does "ordinary pressure" mean?

Section 47602, page 637, line 11—"Ordinary pressure" is not specifically defined.

Section 47604, page 637, line 20

Can it result from any cause other than freezing?

Section 47604, page 637, line 20—Damage to the pulp could possibly result from causes other than freezing.

Section 47662, page 638, line 32

What does "similar varieties" mean?

Section 47662, page 638, line 32—"Similar varieties" means varieties derived by budding from the major strains listed.

Section 48001, page 644, line 38

When is damage caused by broken midribs serious?

What does "fairly well" mean?

Section 48001, page 644, line 38—Damage caused by "broken midribs" is serious when the "midribs of more than four of the outer head leaves, which closely infold the compact portion of the head, are broken in two." (Administrative Code Title 3, Section 1436.3)

Section 48055, page 646, line 24

What is "near" point of production?

Section 48055, page 646, line 24—"Near point of production" is not specifically defined. Our interpretation is within the same county. Also see answer to Sections 5531, 5704, 45663 and 47063.

Section 48056, page 646, line 33

What does "fairly tightly" mean?

Section 48056, page 646, line 33—"Fairly tightly" is not specifically defined.

Section 48352, page 649, lines 43 and 45

What does "distinct" mean?

What does "well developed" mean?

Section 48352, page 649, lines 43 and 45—"Distinct" means plainly visible. "Well developed" means characteristic for the variety.

Section 48443, page 651, line 1

Is this section in conflict with Section 48412, or should an exception be made for container number 31?

Section 48443, page 651, line 1—An exception should be made for container number 31.

Section 48732, page 652, line 35

What does "yellowish color" mean?

Section 48732, page 652, line 35—"Yellowish color" means that the stage of maturity has developed beyond the white immature color of the flesh to a slightly yellowish color. (See Administrative Code Title 3, Section 1449)

Section 48984, page 655, lines 14 and 21

What is the standard for approval by the director of formulae and conditions?

How is the "continued identity" of the lot to be maintained?

Section 48984, page 655, lines 14 and 21—"Little" means less than one-sixteenth of an inch. "Very highly colored" means red blush.

Section 49001, page 655, line 45

What is the standard for preparation of a color chart by the department? Department or director?

Section 49001, page 655, line 45—No specific standard is provided for preparation of the color chart. The chart prepared by the department has been in general use for many years. It is well established.

Section 49002, page 656, lines 1 and 8

What do the following terms mean: "little," "very highly colored"?

Section 49002, page 656, lines 1 and 8—"Little" means one-sixteenth of an inch or less.

"Very highly colored" means red blush. Pear flesh is normally green.

Section 49643, page 662, line 35

What is a "round stave" basket?

Section 49643, page 662, line 35—A "round stave basket" is similar to a "pea hamper" except smaller. It is well known in the trade.

Section 50004, page 665, line 9

What are "long varieties"?

Section 50004, page 665, line 9—"Long varieties" of potatoes are "Burbank" and "White Rose" varieties.

Section 50032, page 666, line 16

Who gives the order?

Section 50032, page 666, line 16—An enforcing officer gives the order.

Section 50061, page 666, line 35

Does this mean the requirements for U.S. No. 1 grade which were established as of the date of enactment of the section?

If not, doesn't this raise constitutional problems of unconstitutional delegation of legislative powers? See *Brock v. Superior Ct.* (1937), 9 Cal. 2d 291, 297.

Section 50061, page 666, line 35—We believe the intent and meaning with regard to U.S. No. 1 grade is the grade currently in effect and not the grade as established on the date of the enactment of the section.

We think the possible constitutional problem regarding delegation of legislative powers is answered by opinions of the Attorney General 43 Ops. Cal. Atty. Gen. 1; 43 Ops. Cal. Atty. Gen. 275.

Section 50063, page 667, line 5

See Section 50061.

Section 50063, page 667, line 5—See answer to Section 50061.

Section 50064, page 667, line 15

See Section 50061.

Section 50064, page 667, line 15—See answer to Section 50061.

Section 50091, page 667, line 50

See Section 50061.

Section 50091, page 667, line 50—See answer to Section 50061.

Section 50654, page 671, line 29

What does "fairly tightly packed" mean?

Section 50654, page 671, line 29—We do not have any specific definition for "fairly tightly packed."

Section 50655, page 671, lines 46 and 49

What do the terms "offset" and "diagonal arrangement method" mean?

What does "approximately the same numerical count" mean?

Section 50655, page 671, lines 46 and 49—"Offset" means not a square diagram. "Diagonal arrangement method" means rows run diagonal across the face of the pack.

Section 50656, page 672, line 2

What does "bridge" mean?

Section 50656, page 672, line 2—"Bridge" means packing in incomplete layer under a full layer causing a bridge.

Section 50831, page 673, line 11

What does "firm and crisp" mean?

Section 50831, page 673, line 11—"Firm and crisp" means in contrast with rubbery or wilted.

Section 52001, page 674, line 45

What else, if anything, does it include?

Is it intended to include every product which is manufactured in whole or in part from such crops, such as plastics and paints? If not, what standard is applied to exclude such products?

Section 52001, page 674, line 45—"Other field crops" means any other crop which is classed as a field crop. "Byproducts" is intended to include agricultural byproducts but not industrial byproducts.

Section 52002, page 674, line 49

What are standards for regulations of director?

In subd. (e), is "fixed by trade" meaningful?

Section 52002, page 674, line 49—The standards for regulations of the director are uniform standards established by the secretary of the U.S. Department of Agriculture as provided in the section.

"Fixed by trade" is meaningful. The trade may wish factors to be certified which are not covered by the standards.

Section 52031, page 676, line 8

Does "products which are included under this chapter" mean something other than "field crops products" as defined by Section 52001? If not, why use separate term?

Section 52031, page 676, line 8—"Products which are included under this chapter" means the same as "field crops products" as defined in Section 52001. There is no need to use a special term.

Section 52254, page 677, line 50

What does "generally known" mean?

Section 52254, page 677, line 50—"Generally known" means popular and common usage of the term defined. Fruit seeds are not vegetable seeds and are not intended to be covered.

Section 52255, page 678, line 4

What "seed" is included? Fruit seed?

Section 52255, page 678, line 4—Fruit seeds are not intended to be covered since they are planted and then budded to produce the desired variety.

Section 52256, page 678, line 7

Does the term "noxious weed" include any weeds which are not "primary or secondary noxious weeds"? If not, is term necessary?

It would appear that any species of plant could be detrimental or destructive and difficult to control in certain environments. What standards are used to determine "difficult"?

Section 52256, page 678, line 7—The term "noxious weed" does not include any weeds which are not primary or secondary noxious weeds. The term is necessary because of the relationship of the Federal Seed Act.

The standard used to determine "difficult" is ordinary good cultural practices.

Section 52257, page 678, line 14

What do the following terms mean: "highly destructive," "difficult," "ordinary good cultural practice"?

What is purpose of first paragraph?

Are there other primary noxious weeds than those here listed or listed in the regulations? If not, should "such as" clause be worded as standards rather than as part of definition?

Section 52257, page 678, line 14—"Highly destructive" is the crowding out of wanted plants by aggressive habits of a noxious weed.

"Difficult" means hard to do.

"Ordinary good cultural practice" means standard methods and procedures used in producing a crop.

The purpose of the first paragraph is to establish legislative intent and guide lines for adding other species by regulations. Also it aids in Federal Seed Act. The "such as" clause is the legislative standard.

Section 52258, page 678, line 45

What is purpose of first paragraph?

Are there other primary noxious weeds than those here listed or listed in the regulations?

Section 52258, page 678, line 45—The purpose of the first paragraph is vague. However, it is the guide line for other added species by regulations. It strengthens the relation with the Federal Seed Act. At present there are no other primary noxious weeds other than those listed here or listed in the regulations.

Section 52259, page 679, line 21

What does "generally known" mean?

Section 52259, page 679, line 21—See answer to Section 52254.

Section 52260, page 679, line 24

In view of Section 52254, does this mean that flower seeds are weed seeds even though the crop to be grown may be a field crop of cut flowers? Cf. Section 52332.

Section 52260, page 679, line 24—If the crop to be grown is a field of cut flowers, the flower seed planted is not covered by the Seed Law. Flower seeds in agricultural seed or vegetable seed are weed seeds.

Section 52285, page 680, line 9

Does this mean the director may prosecute without the district attorney?

Section 52285, page 680, line 9—The language seems to mean that the director may prosecute without the district attorney, but in practice this is not done.

Section 52311, page 680, line 40

If he has taken "such other precautions as may be necessary" how did the seed become incorrectly labeled or represented? Should it be as "usually" or "normally" may be necessary?

Section 52311, page 680, line 40—Original grower or seller could have sold to present seller incorrectly labeled seed and invoiced as such. "Usually" or "normally" may clarify further.

Section 52332, page 681, line 45

What is the standard for the determination by the director that an agency is qualified to certify seeds?

Section 52332, page 681, line 45—No standards are established for the determination by the director that an agency is qualified to certify seeds. However, it is required that the Director of Agriculture consult with the University of California Director of the Agricultural Experiment Station. Factors considered for the certification of an agency are management capabilities and rules of the agency.

Section 52395, page 683, line 41

Is this necessary?

Section 52395, page 683, line 41—We believe this section is necessary.

Section 52483, page 688, line 12

Since purpose of article is not stated, isn't last clause of subdivision (a) somewhat vague?

Section 52483, page 688, line 12—The last clause of subdivision (a) is somewhat vague. Although the purpose of the chapter is not specifically stated, the general purpose of the Seed Law is obvious and can be found by reading the entire chapter.

Section 52484, page 688, lines 24, 25, and 31

What is "crop seed"?

What is intended by "likely to be"?

What are standards for determining "highly toxic"?

Section 52484, page 688, lines 24, 25, and 31—Crop seed is defined by regulation as all agricultural and all vegetable seed.

By use of the term "likely to be" it is intended to include all substances which might react to individuals.

The standard for determining "highly toxic" is not specified but is available information of federal or state agencies.

Section 52511, page 689, line 17

What is such a "lot"?

Section 52511, page 689, line 17—"Lot" is defined by Section 3850(b) Administrative Code as "a definite quantity of seed, subject to the California Seed Law, normally identified by a number or other identification."

Section 52512, page 689, line 31

Is it the "nuisance" which is condemned and destroyed or the "seed" and containers? Cf. Section 52513.

Section 52512, page 689, line 31—"Any lot of agricultural or vegetable seed which does not comply" etc. in Section 52511, is the nuisance. Section 52512 should state "such nuisance as declared by this article."

Section 52514, page 689, line 52

Since the original jurisdiction of municipal courts was increased in other actions to a maximum of $5,000 by Ch. 1973, Stats. 1961, should amount be changed in this section?

Section 52514, page 689, line 52—The amount should be increased to $5,000 to cover any other similar provision.

Section 52982, page 694, line 36

Is it the "nuisance" which is condemned and destroyed or the "seed cotton, cotton plant, or cotton seed and containers"? Cf. Section 52953.

Section 52982, page 694, line 36—"Seed cotton, cotton plant, or cotton seed and containers" are the nuisances. Section 52982 should state "such nuisance as declared by this article."

Section 53302, page 695, line 17

Does "label" mean "labeling" as defined by Section 53005? If not, what is distinction?

Section 53302, page 695, line 17—The words "label" and "labeling" are not the same. "Label" comes within the meaning of "all labels" in the definition of labeling, but is not considered as "other written, printed or graphic representation" stated in the definition of "labeling." The word "label" is more specific than the word "labeling" as defined by Section 53305.

Section 53303, page 695, line 20

What does "commonly grown" mean?

Section 53303, page 695, line 20—"Commonly grown" refers to the general practice of the nursery industry of growing certain kinds of plants in movable con-

tainers in which they are sold, such as pots or cans. We think the complete phrase "commonly grown and sold in movable containers" is understandable to all concerned.

Section 53306, page 695, line 36

What does "nursery stock" mean?

Section 53306, page 695, line 36—"Nursery stock" means all kinds of nursery stock as defined in Section 5005, page 66, except decorative plants and seeds.

Section 53307, page 695, line 39

What are "decorative plants"? See also Section 53306.

Section 53307, page 695, line 39—"Decorative plants" as used in Sections 53306 and 53307 refers to plants which are defined in Section 53303 that are produced and sold in movable containers for decorative purposes indoors. "Indoors" refers to inside a home or place of business but not a glass house.

Section 53451, page 697, lines 39 and 41

What is "seriously" and "abnormally"?

Section 53451, page 697, lines 39 and 41—"Seriously" means irreparable damage to the extent that the plant would be useless, or the damage would limit the usefulness of the plant for the purpose for which it is sold.

"Abnormally pot bound" is a term applying to a plant grown in a container when its roots have become so crowded as to impair the usefulness of the plant for the purpose for which it was sold.

Section 53452, page 697, line 45

What are the "other defective" roots? Standard?

Section 53452, page 697, line 45—"Other defective" roots refers to many variables that may cause defects in the root system of a plant. Examples are: bench root, carrot root, an unbalanced or insufficient root system, and root system lacking.

The standard is a well-developed root system, in proportion to the top growth, which will anchor the plant and allow it to perform normally after planting.

Section 53511, page 698, line 33

What does "official agency" mean?

Section 53511, page 698, line 33—"Official agency" means any agency of government qualified to certify or register nursery stock.

Section 53562, page 699, line 23

Is it the "nuisance" which is condemned and destroyed or the nursery stock?

Section 53562, page 699, line 23—It is the nursery stock which constitutes the nuisance, and which is condemned and destroyed.

Section 53562, page 699, line 20—This comment is not prompted by any question by the council.

We request that "on the relation" be stricken, and "at the request" be substituted therefor. Similar changes are being requested in Sections 7577, 12643 and 14768 in the Trailer Bill.

Section 53564, page 699, line 37

Since the maximum limits in other actions in the municipal courts was increased to $5,000 by Ch. 1973: 1961 should this section be similarly amended?

Section 53564, page 699, line 37—We think this section should be amended to conform with Chapter 1873, Statutes 1961, wherein the maximum limit of the jurisdiction of municipal courts in other actions has been increased to $5,000.

Section 53724, page 705, line 2 (Section 6924—p. 8.45 of Agreed Changes)
What is standard for guidance of commissioner?

Section 53724, page 705, line 2 (Section 6924—p. 8.45 of Agreed Changes).—The standard for the size, manner and location of the certificate of inspection and release to be suitable for display, is an enlarged reproduction of suitable size to be readily readable by purchasers of nursery stock, and prominently posted in main sales areas.

Section 53742, page 705, line 35 (Section 6942—p. 8.46 of Agreed Changes)
What are the standards for the issuance by the commissioner of such regulations?

Section 53742, page 705, line 35 (Section 6942—p. 8.46 of Agreed Changes).—The standard for issuance of regulations governing the issuance and use of certificates of inspection and release is given in Section 53741. The commissioner must also restrict their issuance and use so that they may not be used to move articles which are subject to quarantine, eradication, or holding action by the state.

Section 54003, page 708, line 4
"Includes" or "means"?

Section 54033, page 708, line 45
For what purpose are the associations declared to be "nonprofit"?

Section 54201, page 717, line 44
Which should it be, "may" or "shall"?

Section 54204, page 718, line 25
What does "sanctioned by sound accounting practice" mean?

Section 54003, page 708, line 4—The word "includes" should be changed to "means."

Questions relating to Sections 54033, 54201, and 54204 relate to enabling legislation for the formation of nonprofit cooperative associations of farmers. The department does not have any administrative functions in connection with this chapter, and therefore it is suggested that the questions raised be reviewed by experts in cooperative marketing laws such as the Agricultural Council of California.

Section 54462, page 723, line 44
What is basis for determining the amount of such civil penalty? Is this really a civil penalty or a criminal penalty enforced by a civil action?

Section 54462, page 723, line 44—The basis for determining the amount of such civil penalty is the gravity of the offense as determined by the court. We interpret the penalty to be a civil penalty and not a criminal penalty.

Section 54603, page 724, line 19
What does "customarily" mean?

Section 54603, page 724, line 19—"Customarily" means normally, usually, or frequently.

Section 54606, page 724, line 28
What does "lawfully" mean? If person is not legally conducting warehouse, such as in violation of local zoning ordinance, is he then not subject to these provisions?

Section 54606, page 724, line 28—It is not clear what "lawfully" means in this section. It is recommended that it be deleted.

Section 54638, page 725, line 29

Is the hearing held under the Administrative Procedure Act?

Section 54638, page 725, line 29—The hearing is informal and provides the warehouseman an opportunity to present an explanation of his manner of operation of the warehouse.

Section 54642, page 726, line 5

What sort of a "written instrument"?

Section 54642, page 726, line 5—The "written instrument" would be a letter from the director.

Section 54662, page 726, line 23

What standards guide the director?

Section 54662, page 726, line 23—The "standard" is provided by regulation which establishes the amount of the bond on the basis of the storage capacity and type of product stored.

Section 54663, page 726, line 38

"Insufficient" for what purposes?

Section 54663, page 726, line 38—The bond becomes "insufficient" to secure the faithful performance of the warehouseman's obligation when the capacity of the warehouse is increased or the product becomes of greater value.

Section 54748, page 728, line 42

What does "recognized" mean?

Section 54748, page 728, line 42—"Recognized standard" refers to a standard in general use within the trade as the basis for buying or selling the product.

Section 54751, page 729, line 19

What are the standards for determination by director of terms and conditions and do such requirements vary as to each receipt or apply to all such as by regulation?

Section 54751, page 729, line 19—"Terms and conditions" applying to all receipts are established by regulation. The standards for such would be based on the Uniform Warehouse Receipts Act as well as good management practices.

Section 54771, page 729, line 37

What does "customarily" mean?

Section 54771, page 729, line 37—See answer to Section 54603.

Section 54773, page 730, line 5

What does "duly licensed" mean?

Section 54773, page 730, line 5—"Duly licensed" means licensed by the Director of Agriculture.

Section 54775, page 730, line 18

What is required to constitute "authorized by custom"?

Section 54775, page 730, line 18—We do not think "authorized by custom" is needed since storage in this manner is done by agreement.

Section 54777, page 730, line 47

Statutes of what state?

This code?

Section 54777, page 730, line 47—The reference is to statutes of California and the Agricultural Code.

Section 54802, page 732, line 6

Does "agricultural product" mean something different from "product," as defined by Section 54603?

Section 54802, page 732, line 6—"Agricultural product" means "product" as defined in Section 54603.

Section 55031, page 733, line 38

Commissioner's deputies and inspectors, or director's deputies and inspectors?

Section 55031, page 733, line 38—"Deputies and inspectors" include both the commissioners and the director's deputies and inspectors.

Section 55035, page 734, line 29

Is this section necessary? See Section 17.

Section 55035, page 734, line 29—This section does not appear to be necessary in view of the provisions of Section 17.

Section 55251, page 737, line 25

What does "customarily" mean?

Section 55251, page 737, line 25—See answer to Section 54603.

Section 55254, page 737, line 46

Shouldn't "provided by law" by more specifically designated?

Section 55254, page 737, line 46—"Provided by law" means as provided in Article 3, Chapter 2, Part 3, Division 4, commencing with Section 7571.

Section 55405, page 738, line 38

It includes this, but is that all it includes, and if more, what is it? Or, should it be "means"?

Section 55405, page 738, line 38—"Includes" should be changed to "means."

Section 55438, page 740, line 39

Is last clause necessary?

Section 55438, page 740, line 39—The last clause is not necessary.

Section 55439, page 740, line 42

Is this section necessary? See Section 17.

Section 55439, page 740, line 42—This section is not necessary; however, it is desirable.

Section 55484, page 741, line 39

What does "ipso facto work a revocation or refusal" mean?

Section 55484, page 741, line 39—The intent is for a mandatory revocation or refusal to issue a license as the case may be after hearing, if, in fact, there has been fraud or misrepresentation in an application.

Section 55488, page 742, line 28

What is "violation of record"? What record? Where?

Section 55488, page 742, line 28—"A violation of record" means a conviction, a finding of a violation after hearing and a complaint alleging a violation which results in voluntary remedial action on the part of the licensee to comply with the statute.

Section 55528, page 744, line 31

See Section 55484.

Section 55528, page 744, line 31—See answer to Section 55488.

Section 55529, page 744, line 47

Does this section also apply to an applicant for an agent's license?

Section 55529, page 744, line 47—This section applies to an applicant for an agent's license.

Section 55552, page 745, line 23

What does "producer-creditor" mean?

Section 55552, page 745, line 23—"Producer-creditor" means a producer who delivers a farm product to a processor without receiving full payment on delivery.

Section 55639, page 751, line 19

What is effect of last clause of subd. (a)?

Who are the "labor claimants" in last clause of subd. (d)?

Where did their lien come from?

Any conflict with other subdivisions which do not mention labor claimants' liens?

Section 55639, page 751, line 19—"Labor claimants" might be laborers or labor contractor's employed by the processor to harvest the crop.

We are not aware of any conflict with other subdivisions which do not mention labor claimant's liens.

Section 55650, page 754, line 4

What does "duly noticed" mean?

Section 55650, page 754, line 4—"Duly noticed" means notice requirements of the Code.

Section 55651, page 754, line 18

What does "proper" mean?

Section 55651, page 754, line 18—"Proper" means a good case as determined by the court.

Section 55781, page 760, line 10

Should relation between these provisions and the Administrative Procedure Act provisions governing hearings be clarified?

Section 55781, page 760, line 10—We do not find any need for clarifying the relation between these provisions and the Administrative Procedure Act. Both procedures are clearly defined.

Section 55848, page 763, line 23

Should the difference between "producer-creditors" and "producers" be stated?

Section 55848, page 763, line 23—We do not know of any reason why the differences between "producer-creditor" and "producers" needs to be stated.

Section 55849, page 763, line 38

Is the "24 hours" measured from the time of receipt of such notice, or the time it is sent by mail (see Section 55850) or some other time? Shouldn't it be specified?

Section 55849, page 763, line 38—Twenty-four hours is measured from the time of service—whether served personally or by mail.

Section 55921, page 767, line 20

How can an existing violation be enjoined?

Section 55921, page 767, line 20—"An existing violation probably cannot be enjoined." Action would be brought to enjoin future violations.

Section 55922, page 767, line 33

Is there basis for judging the amount if less than $500? If not, isn't this a penal penalty civilly collected?

Section 55922, page 767, line 33—See answer to Section 55462.

Section 56104, page 768, line 16

Isn't there an ambiguity in saying a "cash buyer" is any person except a "broker" but a "broker" is anyone except a "cash buyer" (Section 56103)? Thus, a person otherwise a broker is not a broker because he paid cash, but he is not a cash buyer because he is a broker. Or, does the person's status vary depending on the particular transaction in question?

Section 56104, page 768, line 16—There is no ambiguity in Section 56104. What the law says is that a broker is any person except a commission merchant, dealer, or cash buyer, who negotiates the purchase or sale of farm products.

A cash buyer is any person except a commission merchant, dealer, or broker, who purchases farm products from the producer by paying the full agreed price of such purchase in coin or currency (lawful money of the United States). There is a considerable difference between a person who buys for cash and takes possession than one who only negotiates between buyer and seller and who may not handle either the product or the proceeds of sale.

Section 56108, page 769, line 8

What does "legitimate permanent business" mean?

What does "usually carried and reasonably adequate" mean?

What does "temporary" mean?

By what standards?

Section 56108, page 769, line 8—(1) Our interpretation of "legitimate permanent business" is a lawful business run in accordance with established rules, principles, or standards and intended to last indefinitely.

(2) "Usually carried and reasonably adequate" means a business is expected to carry an inventory of a size and variety of farm products usually handled which under normal conditions would be sufficient to meet the demands of its customers.

(3) "Temporary" means a business operated for a short or seasonal period of time, one which does not operate on a year-round basis.

Section 56135, page 770, line 24

Is this section necessary? See Section 17.

Section 56135, page 770, line 24—See answer to Section 55439.

Section 56161, page 770, line 49

Should an "exchange" be defined?

Section 56161, page 770, line 49—"Exchange" is defined in Section 57101.

Section 56183, page 772, line 6

What are the "classes" here referred to? Is it the type of product or the type of buying which controls?

Section 56183, page 772, line 6—The "classes" of farm products referred to in subdivision (a) are the generally accepted classes such as fruits, vegetables, nuts, livestock, poultry, etc. It is the type of product which controls with respect to this section.

Section 56185, page 772, line 45

What does "ipso facto work" mean?

Section 56185, page 772, line 45—See answer to Section 55484.

Section 56223, page 775, line 26

Shouldn't "producer-consignor" be defined?

Section 56223, page 775, line 26—We do not find any need for defining "producer-consignor."

Section 56251, page 778, line 21

How are "customary selling charges" determined? What standards?

Section 56251, page 778, line 21—"Customary selling charges" are determined by trade practices generally followed in the industry.

Section 56301, page 780, line 39

In subd. (a), is the "grower" someone other than the producer? If not, why the different terms?

Section 56301, page 780, line 39—"Grower" as used here is synonymous with and means "producer."

Section 56331, page 781, line 6

What "other details"? What standards?

Section 56331, page 781, line 6—Other details concerned in the transaction which might be shown upon the written memorandum of sale might be railroad car numbers, routings, demurrage instructions, icing instructions, whether brokerage is to be paid by buyer or seller or split between the two, all of which are details of the transaction.

Section 56441, page 783, line 29

What does "injurious transactions" mean? Injurious by what standard?

Section 56441, page 783, line 29—"Injurious transactions" mean transactions which injure the producer, such as a transaction in which a worthless check is given or, it might involve the failure or refusal of a licensee to accept farm products under contract without reasonable cause.

Section 56471, page 784, line 51

Should relationship of these provisions to the Administrative Procedure Act provisions governing hearings be specified?

Section 56471, page 784, line 51—See answer to Section 55781.

Section 56536, page 787, line 35

Is the 24 hours from the time of receipt of the notice or the time it is given?

Section 56536, page 787, line 35—See answer to Section 55849.

Section 56540, page 788, line 28

Is the order "pursuant" to the charge or violation?

Section 56540, page 788, line 28—The use of "pursuant" needs clarifying. The phrase "and pursuant to which it is issued" could be eliminated.

Section 56610, page 791, line 43

What does "product"* mean?

* "Product," line 43 of Preprint S.B. No. 1, will be changed to "produce" as found in present law.

Section 56615, page 792, line 22

What does "willful negligence" mean?

Section 56615, page 792, line 22—"Willful negligence" means an act or omission intentionally done in disregard of another's rights.

Section 56637, page 793, line 27
What does "goods" mean?

Section 56637, page 793, line 27—"Goods" is interpreted to mean "farm product" as defined in Section 56109.

Section 56803, page 794, line 36
Is this necessary? Doesn't it cast doubt upon meaning of term "city" as used elsewhere in this code?

Section 56807, page 794, line 51
What does "vicinity of a city" mean?

Section 56922, page 797, line 28
Should the word be "maintain," rather than "obtain" in subd. (a)?

Section 56959, page 799, line 20
What does "vicinity" mean?

Section 57132, page 800, line 38
What are "bases of trade"?

Section 57132, page 800, line 38—"Bases of trade" means such things as units of trade, quality or condition, point of delivery of units traded, condition of payment, etc.

Section 58032, page 803, line 46
What does "common" mean?

Section 58032, page 803, line 46—"Common" storage means storage other than cold storage.

Section 58091, page 805, line 35
Does "farm product" mean something different from "product" as defined in Section 58003?

Section 58091, page 805, line 35—We interpret "farm product" to be synonymous with "product" as defined in Section 58003.

Section 58351, page 807, line 30
Should this provision be transferred to the Business and Professions Code?

Section 58351, page 807, line 30—Transfer of this provision to the Business and Professions Code would be appropriate since it entails no administrative responsibilities and affects only the parties to the contract.

Section 58381, page 808, line 8
What does "customary" mean?
What does "proper" mean?

Section 58381, page 808, line 8—We do not have specific definitions for "customary" or "proper" as related to food in this section. The generally understood use of the terms is probably what is intended.

Section 58604, page 809, line 48
What does "ordinarily accepted meaning" mean?

Section 58604, page 809, line 48—"Ordinarily accepted meaning" as used here, means the usual methods of advertising such as newspapers, magazines, billboards, radio, television, point of sale materials, public relations activities, etc.

Section 58618, page 813, line 23

What does "so changed in form, another and different product" mean? No longer suitable or usable for food?

Section 58618, page 813, line 23—"So changed in form, another and different product" does not necessarily mean no longer suitable or acceptable for food. An example would be a bread made from flour which has been processed from wheat.

Section 58621, page 813, line 41

What if he engages in the business of processor or handler? See Sections 58682 and 58611.

Section 58621, page 813, line 41—A retailer that engages in the business of a processor or handler, as those terms are defined, is treated the same as any other processor or handler.

Section 58658, page 816, line 18

Is this section necessary? See Section 17.

Section 58658, page 816, line 18—This section is desirable but not necessary. See answer to Sections 55439 and 56135.

Section 58682, page 816, line 43

Is the last clause necessary in view of the definition of "retailer" in Section 58621?

Doesn't it in fact conflict with such definition to the extent that it refers to a retailer who also engages in processing?

Section 58682, page 816, line 43—The last clause is necessary to clarify the retailer exemption.

Section 58811, page 825, line 16

What does "normal" mean?

Section 58811, page 825, line 16—"Normal" means the amount usually consumed at a reasonable price. Also see answer to Section 58812.

It does not conflict with the definition of "retailer" since the processing business is considered separate from the retailing business.

Section 58812, page 825, lines 44 and 48

What do "normally" and "commonly" mean?

What available "statistics and surveys" and "reports and indices"?

Section 58812, page 825, lines 44 and 48—We do not have specific definitions for "normally" or "commonly." See answer to Section 58111 for "normally." "Commonly" as used in line two page 826, means articles frequently or generally used by farmers.

"Available statistics and surveys" may include university or government studies and publications or data supplied by persons engaged in production.

"Reports and indices" primarily include published reports of various government agencies.

Section 58813, page 826, line 32

What do the following terms mean: "official publications," "institutions of recognized standing"?

Section 58813, page 826, line 32—"Official publications" generally mean publications of government agencies. "Institutions of recognized standing" would include universities and reputable foundations and research agencies.

Section 58851, page 828, line 47

What is meant by "approval of the director"?

Section 58851, page 828, line 47—"Approval of director" as used here means that the appointment of committees by an advisory board is subject to the approval of the director.

Section 58894, page 834, line 27

What does "board brand" mean?

Section 58894, page 834, line 27—"Board brand" means a brand adopted by a marketing order board which may be used only in accordance with marketing order provisions.

Section 58938, page 840, line 14

What "fund" is referred to? The State Market Act Trust Fund?

Section 58938, page 840, line 14—"Fund" refers to money on hand or deposit to the credit of the marketing order. We suggest the words "which remains in such fund" be deleted and "remaining" be substituted. The money is in a bank deposit not a "fund."

Section 59023, page 845, line 43

What is a "surplus obligation"?

Section 59023, page 845, line 43—"Surplus obligation" would refer to the particular type of surplus control contained in a marketing order—for example, a regulation which would require the delivery of surplus quantities of a commodity to a surplus pool would constitute a surplus obligation.

Section 59087, page 848, line 50

What is "marketing seasons"? How is it determined?

Section 59087, page 848, line 50—"Marketing season" is determined for each marketing order on the basis of the conditions for the commodity covered in the order. It is specified in each marketing order.

Section 59234, page 853, line 26

Penal provision civilly collected? (Cf. Section 59249)

Section 59234, page 853, line 26—This is not considered a penal provision. See answers to Sections 55462 and 55922.

Section 59283, page 858, line 23

What do the terms "perishables" and "nonperishables" mean?

Section 59283, page 858, line 23—"Perishables" means commodities such as fresh fruits or vegetables which deteriorate rapidly. "Nonperishables" means processed products with longer keeping qualities such as canned goods.

Section 59507, page 861, line 30

Does this include "distributors" and "retailers"? If so, is person all three at the same time?

Seition 59507, page 861, line 30—This definition includes "distributors" and "retailers" if they receive any commodity from a producer for the purpose of marketing it.

Section 59509, page 861, line 44

What is "in the current of"?

Section 59509, page 861, line 44—"In the current of" means in the marketing process. It would appear to be surplus language and not needed here.

Section 59610, page 865, line 29

What does "unduly influence" mean?

Section 59610, page 865, line 29—"Unduly influence" probably means to use an excessive amount of persuasion. Although we do not have a specific definition.

Section 59646, page 867, line 48

What is a "marketing season"?

Section 59646, page 867, line 48—See answer to Section 59087.

Section 59647, page 868, line 15

How does a handler become "of record with the department" and thus subject to these requirements?

Section 59647, page 868, line 15—We interpret a handler to be "of record with the department" when his name gets on our mailing list. He may do this on his own by requesting notices or his name may be made available to the department from other sources such as directories or trade associations.

Section 59655, page 869, line 42

What is "established commercial practice"?

Section 59655, page 869, line 42—"Established commercial practice" should be a known or existing custom in the marketing of the commodity.

Section 59656, page 870, line 29

What does "commonly" mean?

Section 59656, page 870, line 29—See answer to Section 58812.

Section 59658, page 871, line 3

What does "recognized standing" mean?

Section 59658, page 871, line 3—See answer to Section 58813.

Section 59721, page 873, line 8

What is a "marketing season"?

Section 59721, page 873, line 8—See answer to Section 59087.

Section 59732, page 875, line 18

Where is the authority for the director to remove a member? Shouldn't it be positively stated?

What is the procedure to be followed?

Section 59732, page 875, line 18—Authority to remove a member is implied in Section 59723 stating requirements for eligibility. If a person should become ineligible or discovered to be ineligible after appointment for the causes stated in this section, no procedure is specified for his removal.

Section 59735, page 876, line 9

Under subd. (b), what is a "proper case"?

How can the commission or director require collaboration or cooperation?

Section 59735, page 876, line 9—"A proper case" should be determined by the commission and the director and would involve another related program or function as a marketing order, or federal marketing order. The commission or the director could require collaboration on the part of the program committee through the approval authority provided. See Section 59736.

Section 59803, page 877, line 18

What is "the uncertificated portion"?

Section 59803, page 877, line 18—"Uncertificated portion" refers to lots of the commodity not covered by proration certificates provided for in Article 10, commencing with Section 59881.

Section 59807, page 878, lines 1 and 5

What does "usual channels of trade" mean?

What is a "self-held" cooperative?

Section 59807, page 878, lines 1 and 5—"Usual channels of trade" means the normal, common or ordinary marketing structure used. We do not know what "self-held" cooperative means. It is probable that this is a typographical error and "self-help" is the term intended.

Section 59813, page 879, line 13

What is "green form"?

Section 59813, page 879, line 13—"Green form" means prior to ripening or not matured.

Section 59816, page 879, line 40

What is "unfairly depreciative"?

Section 59816, page 879, line 40—"Unfairly depreciative" is intended to mean disparage.

Section 59819, page 880, line 15

What is a "marketing season"? Determined by what standard?

Section 59819, page 880, line 15—See answer to Section 59087.

Section 59821, page 880, line 31

What is "tree or vine pulling"?

Section 59821, page 880, line 31—"Tree or vine pulling" means to remove trees or vines.

Section 59886, page 883, line 29

What is the standard by which the program committee is to determine whether or not to authorize the agency to receive such certificates?

Section 59886, page 883, line 29—The standard would be the provision of the marketing program as applied to the commodity of the producer in the possession of the agency.

Section 59918, page 884, line 33

What does "tree or vine pulling" mean?

Section 59918, page 884, line 33—See answer to Section 59821.

Section 59944, page 886, line 26

What is the "seasonal basis"?

Section 59944, page 886, line 26—We believe "seasonal basis" means "marketing season basis."

Section 59981, page 890, line 1

How is the "beginning of the marketing season" determined?

Section 59981, page 890, line 1—See answer to Section 59087.

Section 61312, page 895, line 2

What is significance of use of "consumers" in this section and "general public" in Section 61316?

Section 61312, page 895, line 2—"Consumers" in Section 61312 and "general public" in Section 61316 have different connotations.

"General public" used as part of the definition of "retail store" connotes a purchase for resale. "Consumers" used in conjunction with the definition of packaged milk is probably superfluous, but is added to emphasize the coverage of all sales. The reference is to packages for sale to wholesale customers, retail customers or consumers. Consumer, as such, is the person that utilizes (destroys utility) the product as opposed to a person who may resell the product. Both wholesale and retail consumers exist in a market. A restaurant could be an example of a wholesale consumer.

Section 61379, page 899, line 1

What is "outside advertising"? Outside what?

Section 61379, page 899, line 1—Distributors generally provide two kinds of advertising to or through wholesale customers; inside advertising, such as pictures of malts, pie a la mode, and dairy products, inside the building or a restaurant or a grocery store and outside advertising such as a painted sign in front of a

grocery store that would say "Golden Gate Milk and Ice Cream." Therefore, "outside advertising" is administered as if it means the advertising provided by distributors on the premises of a wholesale customer that is not inside a building.

Section 61380, page 899, line 7

What is "inside advertising"?

What does "customarily" mean?

Section 61380, page 899, line 7—"Inside advertising" is considered to mean the advertising provided by a distributor to a wholesale customer for use inside the building of the wholesale customer and for the purpose of stimulating the sale of the distributor's dairy products.

"Customarily" is descriptive and is probably superfluous. The provision is administered as if the word "customarily" was not there. A distributor is permitted to provide inside advertising which describes "dessert items which are sold in conjunction with the milk, cream, and dairy products."

We do not make any effort to determine dessert items which are "customarily" sold in conjunction with milk, cream and dairy products.

Section 61388, page 901, line 22

What are "current rates" of interest? Charged whom?

Section 61388, page 901, line 22—"Current rates" are administered to mean the rate a distributor could get for his money if he placed it in a bank savings account in lieu of financing the equipment for a wholesale customer. "Charged whom?" refers to the interest rates charged the wholesale customer by the distributor.

If a distributor finances equipment for a wholesale customer and does not charge interest on the money, he is providing the customer with something of value. The closest measure of this value available is the rate that the distributor would get for the money if he placed it in a savings institution to earn interest. We have assumed that the interest paid by banks on a savings account would be an acceptable measure of "current rates."

Section 61572, page 906, line 15

In view of the manner in which the amount is to be determined, how does this penalty differ from that of Section 61571?

Section 61572, page 906, line 15—The penalty described in Section 61571 represents punishment for a misdemeanor with the fines collected accruing to the court. Section 61572 describes a civil liability with the amounts collected accruing to the Director of Agriculture and such funds would be used to offset the expenses incurred in the administration of the milk marketing program.

Section 61803, page 907, line 4

What is the significance of the difference between this section and Section 61302?

Section 61803, page 907, line 4—Section 61803 defines bulk market milk and bulk market cream for the purposes of Chapter 2, while the definition of bulk milk in Section 61302 includes both market milk and manufacturing milk.

Section 61805, page 907, line 19

Does this include manufactured products such as plastics and paint? Cf. Section 61304.

Section 61805, page 907, line 19—The definition of dairy products as contained in Section 61805 and which applies to use of the term within the chapter, is so comprehensive that it includes plastics and paints if the plastics and paints are made from milk or derivatives of milk. The definition is probably unnecessarily comprehensive. We have not had administrative problems with the definition.

Section 61806, page 907, lines 28, 33, and 38

What do the following terms mean: "handles . . . for sale," "actively and directly"?

Section 61806, page 907, lines 28, 33, and 38—The term "handles for sale" is designed to include, within the definition of distributor, persons who market

milk that is owned by other persons. For example, a cooperative marketing association that handles for sale the milk owned by its producer members. It is designed to cover persons who market milk for other persons on a "best recovery" basis without taking ownership of the milk.

"Actively and directly" was amended into the definition of distributor to limit the distributor status of retail stores when such retail stores are given the privilege of acting as a distributor.

A retail store cannot be a distributor unless it is actively and directly engaged in the processing and packaging of fluid milk.

We interpret this to mean as if it read that a retail store could not be a distributor unless it is a bonafide processor and distributor of the milk that it sells through its stores, and further, that its distributor status is limited to the milk which it handles in this manner, and that it would be a wholesale customer with respect to processed and packaged milk that it purchased from another distributor.

Section 61807, page 908, line 42

What does "consumed" mean? What if used in manufacturing?

Section 61807, page 908, line 42—"Consumed" is considered to mean the destruction or utility and includes manufacturiug as well as eating.

Section 62007, page 921, line 25

Shouldn't "producer-creditors" be more definite?

Section 62007, page 921, line 25—A more definite definition of "producer-creditor" would be helpful. However with the reading of the previous sections the meaning appears clear.

Section 62121, page 928, line 11

What does "producer price minimums" mean? How does it vary from "minimum prices to be paid by distributors" in Section 62411?

Section 62121, page 928, line 11—"Producer price minimums" means the same as "minimum prices to be paid by distributors" in Section 62411.

Section 62151, page 928, line 27

Shouldn't the title of this board be changed to avoid confusion with the local advisory board created under Article 10 (commencing with Section 62111) of this chapter?

Section 62151, page 928, line 27—The suggestion is valid. The title of the board should be distinguished from boards under Section 62111.

Section 62271, page 935, line 40

What is meant by "for pasteurization purposes"? Is it determined by actual use or intended use at time it is supplied?

Section 62271, page 935, line 40—"For pasteurization purposes" was initially added to the provision authorizing equalization pools for the purpose of exempting raw milk producer-distributors from the provisions of the equalization prgram.

Section 62301, page 937, line 20

Must the marketing of the commodity be "authorized by law" specifically or is it enough if it is lawful to market the commodity?

Section 62301, page 937, line 20—It is enough if it is lawful to market the commodity.

Section 62308, page 939, lines 12 and 13

Under subd. (b), are not all the producers or distributors, rather than only those petitioning for the program, required to be assessed?

Section 62308, page 939, line 12—The sales stimulation and consumer educational assessments, once a program has been established, are levied against all members of the industry and not just those petitioning for the program. The words "those petitioning for the program" are interpreted to mean those pro-

ducers or those distributors or those producer-distributors by category rather than individuals within the category.

Section 62311, page 939, line 49

How does a person become "ineligible" to serve?

Section 62311, page 939, line 49—Persons become ineligible to serve by going out of business or otherwise losing their classification as producer, distributor or producer-distributor, as the case may be.

Section 62417, page 946, line 26

Isn't first sentence, being permissive, in conflict with Section 62412, which is mandatory?

Should meaning of last clause of the section be clarified?

Section 62417, page 946, line 26—The first sentence in Section 62417 is not considered to be in conflict with Section 62412. Section 62417 states that the director may, subject to the mandatory component pricing for class 1 usage, establish prices for milk, cream, skim milk, milk fat, or skim milk components of milk. This authority for different methods of pricing is general and relates to all three classes. Superimposed on this general authority, and at a later date, is the restriction that class 1 prices must be upon a milk fat and solids-not-fat basis.

The last sentence of the section is held to mean once prices are established for a marketing area, these prices are applicable to the milk utilized in the marketing area even though the milk is produced outside of the area or in some other area.

This is an important precept and needs to be maintained, i.e., the marketing area boundaries circumscribe a usage area and not a milk production area. Whether or not this could be or should be expressed in better language, is problematical; however, we are having no problem with the present language.

Section 62487, page 952, line 46

What is the difference between "sufficient" and "reasonably sufficient"?

Section 62487, page 952, line 46—When this pricing standard states that the minimum prices should be sufficient to cover costs, that means the prices shall be at or above costs. It should be noted here that prices way above cost would also meet the standard, therefore, the standard was further amplified by saying "by no more than reasonably sufficient to cover costs." This restricts the standard. The word "reasonably" allows some tolerance. If the word "reasonably" was not there and the standard stated that the prices shall be no more than sufficient to cover costs, the standard would be rigid.

We believe the inclusion of the word "reasonably" adds the lubrication of judgment and should be retained.

Section 62581, page 957, line 4

What does "all such distributors" mean? As originally enacted (Ch. 241, Stats. 1935), it apparently included only distributors in a marketing area in which a marketing agreement or stabilization and marketing plan was in effect.

Who were required to be licensed?

Section 62581, page 957, line 4—The beginning sentence under this section starts with "all such distributors." We believe the word "such" should be deleted.

Section 64016, page 963, line 9

"Hereinafter otherwise provided" where?

Section 64016, page 963, line 9—"Except as hereinafter otherwise provided" could refer to page 965, lines 18, 19, and 20. It may be felt that a limitation is placed upon producer-handlers by requiring producer-handler members of the council to produce a major portion of the milk which is used in the dairy products which are handled by them. Otherwise, we do not know of the purpose of the words "hereinafter otherwise provided."

Section 64117, page 967, line 52

What standards guide the director in prescribing such terms and conditions?

Section 64117, page 967, line 52—Standards are not specified for guiding the director to prescribe such terms or conditions. However, it is assumed that the director, in requiring such a fidelity bond, would have the bond contain such terms and conditions as are customary and standard requirements of performance or fidelity bonds.

Section 64151, page 968, line 44

Under subd. (g), what does "organizations of recognized professional standing" mean?

Section 64151, page 968, line 44—We interpret "organizations of recognized professional standing" to mean such organizations and institutions that are recognized by and staffed with professional scientists with accredited degrees in the research to be undertaken. Also see answer to Section 58813.

Section 64182, page 971, line 35

What is a "recognized research agency"?

Section 64182, page 971, line 35—We believe that a "recognized research agency" means an agency that engages in research utilizing scholars in the particular area of research who have degrees from accredited universities in the area of research and these scholars are considered by their colleagues and other experts in the same area of research, to be proficient in the area of research.

Section 64592, page 982, line 27

For what "cause"?

Section 64592, page 982, line 27—The meaning of "cause" is not clear. It would include ineligibility as provided in Section 64591. Also a reason demanded by the public interest.

Section 64631, page 985, line 10

Under subd. (g), what does "organizations of recognized professional standing" mean?

Section 64631, page 985, line 10—See answer to Section 58813 and Section 64151.

Section 64633, page 985, line 32

What is an "alternate agent"?

Section 64633, page 985, line 32—"Alternate agent" is incorrect. It should read "alternate member, agent."

Section 64699, page 990, line 10

May this section be repealed as obsolete?

Section 64699, page 990, line 10—This section may be repealed as obsolete.

Chapter III

PRESENT STATUS OF THE "REPORT ON SURVEY" OF THE BUREAU OF LIVESTOCK IDENTIFICATION

Chapter III

PRESENT STATUS OF THE "REPORT ON SURVEY" OF THE BUREAU OF LIVESTOCK IDENTIFICATION, STATE DEPARTMENT OF AGRICULTURE, BY THE MANAGEMENT CONSULTING FIRM OF BOOZ, ALLEN & HAMILTON, INC.

For a multitude of reasons, including Senate reapportionment, there has been quite a delay between the time the Booz, Allen & Hamilton, Inc. Report on Survey was initially presented to the Senate Fact Finding Committee on Agriculture and final action taken by the committee on the recommendations and alternatives suggested for improving the services of the Bureau of Livestock Identification. Therefore, it may be well to briefly review the chain of events which ultimately led to final action by the factfinding committee on September 12, 1966.

History

As early as 1961, the California Cattlemen's Association, concerned with the rapidly increasing costs to the industry necessary to operate the Bureau of Livestock Identification, appointed an industrywide committee to make a thorough investigation of the Bureau of Livestock Identification in an effort to determine if the cattle industry was receiving its money's worth, and if the industry was actually receiving the type of service it desired.

This association industry committee, under the auspices of the Senate Fact Finding Committee on Agriculture, in turn requested the office of the Legislative Analyst to make a preliminary appraisal of the Bureau of Livestock Identification for the purpose of attempting to identify areas of the bureau's program susceptible to modification or other changes which would permit operating economies, or otherwise lower costs to the bureau.

The office of the Legislative Analyst, in a report submitted to the Senate Fact Finding Committee on Agriculture under date of April 3, 1963, said in part:

"We have found a need for an intensive and comprehensive study of the livestock identification program. . . ."

This finding, in turn, led to the introduction and ultimate passage of Senate Bill 1444, as a committee bill, at the 1963 session. Senate Bill 1444, in effect, appropriated $35,000 from the hide-and-brand funds in the State Department of Agriculture for use by the Senate Fact Finding Committee on Agriculture in contracting for a study of the hide-and-brand inspection laws.

In October of 1963, Senator O'Sullivan, chairman of the committee, was authorized by the factfinding committee to appoint a representative industry advisory committee to assist in the selection of a management consulting firm to conduct this study.

Appointed to serve on this committee were the following:
Three representatives of range cattle:

Brunel Christensen, chairman, from Likely, Modoc County; Robert O. Johnson, from Sanger, Fresno County; and Ward Woody, of Woody, Kern County.

Three representatives of feeder cattle:

Harvey McDougal, of Rio Vista, Solano County; John Guthrie, of Porterville, Tulare County; and Will Gill, Jr., of Madera, Madera County.

Three representatives of dairy cattle:

Leonard Gomes, of Hanford, Kings County; George te Velde, of Upland, San Bernardino County; and Frank Steiner, of Vacaville, Solano County.

One representative of the meat packers:

Norman Maffit, of San Francisco; and

One representative of the sales yards:

H. C. Jackson, of Visalia, Tulare County.

This industry advisory committee, after reviewing the study proposals submitted by some 10 consulting firms and agencies, and following personal interviews with representatives of three of the leading firms, selected Booz, Allen & Hamilton, Inc. to accomplish this study for an amount not to exceed $29,000. On July 13, 1964, a contract was entered into between Booz, Allen & Hamilton, Inc. and the Senate Fact Finding Committee on Agriculture to undertake this study.

The study was completed and formally submitted to the Senate Fact Finding Committee on Agriculture at a meeting held in Sacramento on November 12, 1964. This Report on Survey of the Bureau of Livestock Identification was submitted to the California Legislature as a committee report under date of February 15, 1965. In the letter of transmittal accompanying the report, it was pointed out that the report was being submitted at that time in order that sufficient copies could be printed and made available to representatives of the cattle industry and to other interested individuals and organizations.

The letter of transmittal went on to say,

"It should be emphasized that while the Senate Fact Finding Committee on Agriculture has accepted this report, at this particular point no action has been taken on the recommendations and alternatives for improving the services of the Bureau of Livestock Identification, as suggested in the report by Booz, Allen & Hamilton, Inc."

The letter also went on to say that no action would be taken until such time as the Cattle Industry Advisory Committee, together with representatives of all segments of the industry and others interested, have had an opportunity to study the recommendations and alternatives and to present their views to the Senate Fact Finding Committee on Agriculture.

Subsequently, 1,000 copies of the report were printed and given wide distribution throughout the state. Since that time, the Cattle Indus-

try Advisory Committee met on at least two separate occasions. In a report submitted by Mr. Brunel Christensen, chairman, he outlined his committee's position on the recommendations and findings made by Booz, Allen & Hamilton, Inc. at a meeting of the Senate Fact Finding Committee on Agriculture held at Salinas, California, on December 7, 1965.

Cattle Industry Advisory Committee Recommendations

Following are the 10 recommendations and alternatives advanced by Booz, Allen & Hamilton, Inc. for improving the services of the Bureau of Livestock Identification, together with the recommendations of the Cattle Industry Advisory Committee, and the action taken on two of the recommendations by the Senate Fact Finding Committee on Agriculture:

Booz, Allen & Hamilton, Inc. recommendation No. 1

Modify or change the present inspection system to make the program either more equitable or effective. According to Booz, Allen & Hamilton, this could be accomplished in three ways:

(1) Increase point of origin inspection fees;
(2) Inspection at feed lots to be made on incoming cattle for California fed cattle; and
(3) Proof of ownership could be eliminated by licensing procedure, but this alternative, Booz, Allen & Hamilton indicated, is not widely supported.

The advisory committee recommended that the present program be retained as constituted, but that costs of the program be placed at the point of benefit.

With reference to the third suggestion advanced by Booz, Allen & Hamilton, relative to proof of ownership, the advisory committee specifically recommended, after considerable discussion, that no change be made in present requirements relative to ownership of livestock.

Booz, Allen & Hamilton, Inc. recommendation No. 2

Strengthen bureau effectiveness by adding specialists in law enforcement. Specifically, Booz, Allen & Hamilton recommended that law enforcement specialists be employed by the Bureau of Livestock Identification to handle all cattle theft cases. They further suggested that two such specialists be retained at first and that personnel be added, based upon caseload.

The advisory committee, together with other industry representatives present at the meeting in Salinas, with reference to this specific recommendation, suggested that one specialist in law enforcement be added on a one-year trial basis and that following this period an evaluation be made to determine the cost and the effectiveness of adding one such specialist. This recommendation was concurred in by the Senate Fact Finding Committee on Agriculture at a meeting held at Folsom State Prison, Folsom, on September 12, 1966. At this time the committee consultant was directed to write a letter to Mr. Charles Paul, Director of the State Department of Agriculture, asking for an appropriate budget augmentation to accomplish this objective.

Booz, Allen & Hamilton, Inc. recommendation No. 3

Delegate more authority to district supervisors and make program coordination the responsibility of the bureau chief. In effect, this recommendation, if implemented, would eliminate the position of program coordinator. What Booz, Allen & Hamilton said, in effect, was that program coordination should be one of the prime responsibilities of the bureau chief, working directly with the supervisors and not through a program coordinator.

While the advisory committee initially supported this specific recommendation, Brunel Christensen, chairman of the committee said in his final report to the Fact Finding Committee that after further reflection he and several others had serious reservations regarding the implementation of this specific recommendation.

Booz, Allen & Hamilton, Inc. recommendation No. 4

Develop standards for majority of brand inspection work to permit planning, scheduling, and monitoring of performance of brand inspectors.

The advisory committee recommended approval of this recommendation without comment.

Booz, Allen & Hamilton, Inc. recommendation No. 5

Conduct regular training programs for all field personnel.

The advisory committee took the position that such a program would help to coordinate the work of the entire program and for this reason recommended approval of such training programs.

Booz, Allen & Hamilton, Inc. recommendation No. 6

Prepare literature describing the bureau's program and services.

The advisory committee recommended that the department continue as it is presently doing—using existing facilities and news media. The committee took this position after reviewing the public relations program of the bureau and was convinced it was doing all that was necessary at the present time.

Booz, Allen & Hamilton, Inc. recommendation No. 7

Dissolve Livestock Identification Advisory Board. It should be noted here that this board (See Agricultural Code Section 335) presently consists of five members:

Two representing beef cattle; two representatives of the diary industry; and one representative from the livestock marketing business.

An alternative recommendation to dissolution of the board, according to Booz, Allen & Hamilton, would be to give the board policy-making responsibilities. However, they stated that this alternative did not appear to be practicable.

The advisory committee, rather than concurring in these recommendations, suggested that the present board be enlarged to include two additional representatives of the beef cattle industry; one a range producer and one a feeder.

This recommendation and alternative suggestion, together with the recommendation advanced by the advisory committee, were discussed by the Senate Fact Finding Committee on Agriculture, in executive session, on September 12, 1966. The consensus was that there would

be little point in increasing the membership of the board if it were not to be given more responsibility

Also, it was noted that an increase in membership, as was suggested, would increase the bureau's cost and at the same time would upset the industry balance on the board. For example, if two or more beef cattle members were to be added, in all fairness two more representatives of the diary industry should also be added, as well as another livestock marketing business representative.

Specifically, the Senate Fact Finding Committee on Agriculture recommended that the board continue as presently constituted.

Booz, Allen & Hamilton, Inc. recommendation No. 8

Both a cattle tax and state general funds appear impractical as alternative sources of revenue.

The advisory committee concurred in this recommendation that both a cattle tax and the State General Fund appear impractical as alternative sources of revenue for operation of the Bureau of Livestock Identification.

Booz, Allen & Hamilton, Inc. alternative recommendation No. 9

An industrywide insurance program would not provide the required inspection systems and the cost would probably be prohibitive.

The advisory committee concurred in this recommendation.

Booz, Allen & Hamilton, Inc. alternative recommendation No. 10

Scope of bureau program limits use of other agencies or groups to provide bureau program support.

The advisory committee concurred in this finding by Booz, Allen & Hamilton.

Chapter IV

COROLLARY HIDE AND BRAND LAW STUDY

Chapter IV

A COROLLARY HIDE AND BRAND LAW STUDY INITIATED

On May 17, 1965, Senator Joseph A. Rattigan, an attorney member of the Senate Fact Finding Committee on Agriculture, introduced Senate Resolution No. 185, relating to animals. Senate Resolution No. 185 reads as follows:

"WHEREAS, A number of bills have been introduced at this and previous sessions of the Legislature designed to resolve problems relating to sale, bills of sale, transfer, consignment, title, brand inspection and registration certificates, ownership, evidence of ownership, possession and warranties, together with other commercial paper associated with transactions involving many different types of animals; and

"WHEREAS, These measures have represented a piecemeal approach to the resolution of these many problems facing the state's livestock industry; and

"WHEREAS, These problems are still present and unless resolved will continue to have a deleterious effect not only on the livestock industry but on the entire economy of the state; now, therefore, be it

"*Resolved by the Senate of the State of California,* That the Senate Rules Committee is requested to assign to the appropriate factfinding committee for interim study the problems recited in this resolution and to direct the factfinding committee to report its findings thereon to the Senate not later than the 30th calendar day of the 1967 Regular Session of the Legislature."

This resolution was referred to the Senate Rules Committee and ultimately referred to the Senate Fact Finding Committee on Agriculture for study during the 1965–66 interim period.

Senate Resolution No. 185 was considered by the committee at a meeting held in Salinas on Tuesday, December 7, 1965. Senator Rattigan, author of the resolution, defined it as an attempt to identify the problem. He pointed out that three sessions ago a bill was introduced pertaining to the conversion of the proceeds of sale of a mortgaged animal. In that particular case, the bill referred to cattle. The objective of this bill was to make it a more severe crime and after three sessions this act was made an embezzlement.

Again in 1965, another problem arose which came out of the claim of title—right of possession of animals. Senator Rattigan indicated he had been shown some of the bills of sale—alleged documents of title—which were handwritten and illegible and obviously by their very content created many types of problems.

There were collateral problems, Senator Rattigan went on to say, discussed in terms of requisite contents of such documents and the degree of crime and punishment for altering or defacing them.

Senator Rattigan further stated that throughout these chapters relating to the Brand Registration Law, Estray Law, and in those laws affecting slaughtering, including other animals such as sheep, horses, and swine, there are many references to the documents by which a person proves ownership of one single head of livestock. These are referred to variously as certificates of ownership, bills of sale, sales tags, sales

memoranda, certificates of assignment, and several others. In some cases the requisite content of such a document is spelled out in the code and in others it isn't.

Senator Rattigan also mentioned the fact that it is a crime to alter or deface some named documents and in other cases it isn't.

In the hope of clearing up some of these problems, which had been brought to his attention by Senator O'Sullivan, then chairman of the Senate Fact Finding Committee on Agriculture, and also by members of the California Cattlemen's Association, Senator Rattigan received permission from the chairman to have the committee consultant request the Legislative Counsel to review all of these documents of title; the references to them in the code, references to their alteration, references to their requisite contents. By this screening action, it was hoped to make these documents as uniform as possible in order that the industry would have a higher degree of reliability for these documents.

It was Senator Rattigan's opinion that this undertaking would hurt only the illegitimate operator and yet, at the same time, would afford further security to the legitimate owners and to the lending agencies involved.

In a letter dated July 3, 1966, the office of the Legislative Counsel was requested by the committee consultant to specifically research those sections of the Agricultural Code relating to the various documents presently being used to establish ownership of animals and livestock in particular. It was pointed out that this was an effort to reduce the number of documents and if this was not possible, to at least attain some degree of uniformity leading to, as stated by Senator Rattigan, "... a higher degree of reliability for these documents."

Under date of June 18, 1966, pursuant to a request by the committee consultant, the office of the Legislative Counsel prepared a compilation of the provisions of the Agricultural Code relating to documents which may be involved with cattle and other livestock. In the letter accompanying the compilation, the Legislative Counsel pointed out that the committee consultant had also asked what changes might be made to make these provisions more uniform and to clarify their application.

The Legislative Counsel also pointed out in their letter that, "Preliminarily, it should be noted that although branding is authorized for the purpose of establishing or indicating ownership of bovine animals (Sec. 331.1 and 332.2, of the Agricultural Code), horses, mules, burros, sheep, and swine (Secs. 380.51), such branding is not required. Thus many provisions must be written to cover animals whose ownership is determined other than by a recorded brand. (See Secs. 353.8, 357.1, and 360.)

"Also, these provisions often deal with both branded and unbranded animals in the same section and cover animals involved in various transactions, such as sales, consignments, and gifts, in the same section, which can seem to lead to contradictory language or language which is not uniform. (Cf. Secs. 352, 357.1, and 368.)

"There is also an area of possible confusion involved in those sections which relate to sales but cover the relatively dissimilar situations of a public sales yard and a private sale and inspected and noninspected animals. (Secs. 352, 353.8, and 368.) What changes should be made to re-

solve these problems, of course, involve policy decisions which we are not in a position to make."

Industry Comments

At this same meeting, Harvey McDougal, a prominent cattle feeder from Birds Landing, in speaking to Senate Resolution No. 185 and the comments by its author, pointed out that under the late Senator Hatfield's chairmanship in 1947, the entire Hide and Brand Law was thoroughly reviewed.

Mr. McDougal went on to say, "It is my wish, and my hope that the industry can get together a committee of 10 or 12, or whatever it takes, before we come to you with it, and sit down and thresh out the whole thing. Over a period of years there have been some inequities develop which cannot be corrected with the present law. But before we come to the Legislature to bother you with it, we would like to have the industry sit down and work out some of these things that we feel would benefit the whole industry. This would tie directly into what you, Senator Rattigan, are talking about."

Mr. McDougal went on to say, "I think it took us three years the last time to review the Hide and Brand Law. It is not something that will happen immediately, with the various meetings necessary with industry representatives from one end of the state to another."

Mr. McDougal also went on to state that he thought it would be helpful to the industry if Senator Sturgeon appointed such a committee. At the same time, Senator Sturgeon asked the industry to submit names of individuals who would be willing to serve on such a committee.

In his concluding remarks, Mr. McDougal said the cattle industry, in his opinion, had changed so much in 15 years that he was quite certain there were changes that could be made in the law to make it work more effectively and serve more people satisfactorily.

Mr. Joseph M. Urrutia, a cattle feeder from Friant, and an official of the California Farm Bureau Federation, in his testimony to the committee on Senate Resolution No. 185 said that, "I am in wholehearted support of what Harvey McDougal said. I think this would be good for the industry."

In a statement submitted for the record of the committee's proceedings at the meeting held in Salinas, on December 7, 1965, Mr. W. L. Thompson, operations manager of the Certified Livestock Markets Association, in addition to several other recommendations, said, "We further recommend that a committee composed of a cross-section of all people in the livestock industry be appointed to make a thorough study of ways and means to update and improve the brand laws."

Committee Appointments

The following day, December 8, 1965, at a meeting of the Senate Fact Finding Committee on Agriculture, held at the California Training Facility, at Soledad, Senator Sturgeon, chairman of the committee, was authorized by the full committee, as requested by the industry representatives, to appoint such a representative Industry Advisory Committee to continue this study.

In his letter of invitation to industry representatives to serve on this advisory committee, Chairman Sturgeon pointed out that this comprehensive study of the Hide and Brand Laws administered by the Bureau of Livestock Identification will be an entirely new study, separate and distinct from the Report on Survey on the Bureau of Livestock Identification made for the factfinding committee by Booz, Allen & Hamilton, Inc., with the assistance of an industry advisory committee.

Senator Sturgeon pointed out that it is anticipated this in depth study will be comparable to that of the Subcommittee on Hide and Brands of the Joint Interim Committee on Agriculture and Livestock Problems, which was published in report form by the California Senate in 1947.

Appointed to serve on this Cattle Industry Advisory Committee were the following:

Gordon Van Vleck, *Chairman,* Sloughhouse, Sacramento County, California.

MEMBERS

Beef Producers

Baumgartner, John J., of Paicines
Christensen, Brunel, of Likely
Johnson, Robert O., of Sanger
Paregien, Claude, of Visalia
Snedden, David F., of Bakersfield
Van Vleck, Gordon, of Sloughhouse

Beef Cattle Feeders

Cameron, Dan and/or Ed Rutherford, of Brawley
Ferguson, Jim, of Gonzales
Gill, Will, Jr., of Madera
McDougal, Harvey A., of Birds Landing
Williams, Hal, of Whittier
Urrutia, Joseph M., of Friant

Dairymen

Branco, Joseph, of Merced
Scott, Leonard, of Pomona
Steiner, Frank, of Vacaville
Warden, Don, of San Luis Obispo

Marketing

Feldmiller, L. W., of Stockton

Slaughterer

Marks, W. S., of Woodland

Financial Institutions

Westra, Tony L., of Sacramento

An organizational meeting of this new industry Hide and Brand Advisory Committee was held on September 20, 1966, in Room 3189,

of the State Capitol, Sacramento. The following members were present:

Baumgartner, Johnson, Paregien, Chairman Van Vleck, Urrutia, Ferguson, Gill, McDougal, Williams, Feldmiller, Marks, and Westra.

Also present were:

Carson Hubbard, chief, Bureau of Livestock Identification

Paul Huff, committee consultant
Senator Vernon L. Sturgeon, chairman, Senate Fact Finding Committee on Agriculture.

The following members were absent:

Christensen, Snedden, Cameron, Branco, Scott, Steiner, and Warden.

Special Subcommittee Appointed

At the meeting held on September 20, 1966, the full committee agreed to proceed with the study. Chairman Van Vleck was authorized to appoint a special subcommittee to undertake the study. Appointed to serve were the following:

Beef producers ---------- John L. Baumgartner
Beef cattle feeders ---------- Hal Williams
Dairymen ---------- Leonard Scott
Marketing ---------- L. W. Feldmiller
Slaughterhouses ---------- W. S. Marks
Financial institution ---------- Tony L. Westra

The following questions raised and problem areas cited at this meeting are to a degree indicative of the need for the study:

1. Proof of ownership, particularly of dairy cattle.
   (Note: Not now considered a major problem.)
2. Lack of a procedure, or technique, or device to establish proof of ownership once the original bill of sale or certificate of ownership has been lost.
3. How much brand inspection is actually needed, if brand inspection is wanted by the entire industry.
4. Should brand inspection be accomplished by agencies other than the state; e.g., local sheriffs' offices.
   (Note: Booz, Allen & Hamilton, Inc. said in their report that this would be less effective.)
5. Would destination inspection at time of slaughter be of value?
6. Brand inspection within five years will cost the industry in excess of $1 million. Just what would the losses be without brand inspection?
7. Is there a bona fide need for feed lot inspection in point of origin counties for cattle moving to immediate slaughter within the same county?
8. Need for twice-a-day brand inspection at slaughterhouses and packing plants.
9. Is there a bona fide need for a reinspection at time of slaughter on any point of origin cattle for which a brand inspection certificate has been issued prior to movement to slaughter?

10. Problem of time lost by brand inspector while waiting for cattle to be rounded up, sorted, tallied, etc., prior to inspection.
11. Problem of using brand inspectors to perform work other than actual cattle brand inspection.
12. Should a cutoff time for receipt of cattle at sales yards and livestock auctions be established by law?
13. Would there be any merit in legislation designed to strengthen civil penalties as a deterrent to cattle theft?
    (Note: See Code of Civil Procedure, Sec. 733, enacted 1872, and Sec. 3346, Civil Code, enacted 1957.)
    Both of these sections, in effect, provide in part that for wrongful injury to timber, trees, or underwood upon the land of another, or removal thereof, "the measure of damages is three times such sum as would compensate for the actual detriment. . . ."

Chapter V

A. Capital Outlay Expenditures in the 1965–66 State Budget for Agricultural Structures and Facilities at State Institutions.

B. Capital Outlay Expenditures in the 1966–67 State Budget for Agricultural Structures and Facilities at State Institutions.

Chapter V

A. 1965–66 AGRICULTURAL CAPITAL OUTLAY ITEMS

CORRECTIONAL INSTITUTIONS

Deuel Vocational Institution

1. Install Concrete Pipeline $23,359

This will complete the pipeline from the institution boundary line to the distribution reservoir.

Last year approval was given to the first increment of $9,750. It will eliminate the open ditch which allows excessive seepage and water losses and also contributes to the high water table.

Progress is being made in reclaiming and improving the farm land but until the ditches which carry water 24 hours a day can be put into pipelines this improvement is slow.

Some distribution ditches from the reservoir should be eliminated with pipelines in the near future.

Savings in pumping costs as well as reducing drainage problems should make this a good investment.

Cost estimate: 24" concrete pipeline contract $23,359

In the discussion concerning this item it was pointed out that in an effort to reduce the cost the institution planned to use concrete pipe (not reinforced) with rubber gaskets. The members were also advised that while the figure for the project was a contract price, inmate labor, where feasible, would be used.

While not speaking against the project, Mr. Larry Dahms, representing the office of the Legislative Analyst, cautioned the committee regarding the amortization of the project, particularly in view of the fact considerable money has already been allocated for the institution's farm drainage and high water table problem and more funds are contemplated in the future.

The committee recommends approval.

2. Dairy Modernization $264,000

The project includes a new milking barn and equipment, refrigerated storage and processing space. With this addition the number of cows being milked can be increased from 250 to 440 as marketing conditions require. The present milk barn and processing room was designed to handle a herd of 70 cows comfortably. Over the period of 11 years since beginning operations, the need for production has increased to where 235–240 cows must be milked, lengthening both the barn time and the processing room time. Facilities are inadequate to this load, in fact in one way so limited as to necessitate turning off the heat when processing to assure sufficient steam for pasteurization.

This expansion will not only improve existing facilities but will enable the institution to provide fluid milk for Sierra Conservation Cen-

ter and the Northern California Youth Center. This is based on populations and rations, as follows:

Facility	*Population*	*Ration/ day*	*Gal./day*
Deuel Vocational Institution	2,000	1 qt.	500
Stockton State Hospital	3,716	1⅓ pt.	620
Stockton State Hospital—employees' dining room			110
Sierra Conservation Center	1,600	1 pt.	200
Stockton C.Y.A. (initial)	1,600	1 qt.	400
			1,830
Staff dining room requirements			150
Total			1,980

This modernization and expansion will enable industries to train and employ 15 additional inmates in the dairy and 5 additional inmates in farm and other areas.

Proposed Structure:

New:

1. One twin-pit, 8-stall milk parlor barn approximately 50′ x 100′ constructed with reinforced concrete floor, concrete block walls, corrugated metal roof supported on metal or wood trusses. Infrared overhead heaters for each of the two pit areas, sewage, electrical service, vacuum milk pump, Ross-Holm automatic grain feeding system, pipeline milker with automatic washup system, water supply, stanchions, power operated gates, ramps, and adjacent paved holding pens. A breezeway connection to existing barn would be required. All stalls, milk pumps, gates, etc., to be equivalent to the Ross-Holm Lactomation system; 10′ x 50′ office space for farm manager, dairyman and records, lavatory, lighting, water, heating, sewage, and electrical outlets as required.

2. Two corrugated iron bulk grain storage bins with 11 ton capacity each. Installed on concrete pads with bottom unloading augers.

Additions:

3. Refrigerated storage room, 12′ x 22′, reinforced concrete throughout except roof which would be wood supported corrugated iron. Supplied with insulation, freon compressor and evaporator such that temperature of 34 degrees F. can be maintained when ambient temperatures are 100 degrees F. Lighting, two insulated doors equipped with emergency lock releases and an emergency alarm will be installed. Metal armor strips inside to protect the walls are planned.

4. Boiler room 19′ x 18′ reinforced concrete throughout except for wood supported corrugated iron roof. Electricity, natural gas, fuel oil, and water are required. Utility opening would be required for steam pipes to go under milk processing room.

5. Processing room extension 13′ x 32′. Concrete block walls, reinforced concrete floor at same level as existing milk room floor, plastered walls and ceiling, corrugated metal roof, electricity, lights, heat, compressed air, water and steam. Ceiling ventilation as required.

6. Electrical service will need to be increased, and additional boiler of 60 HP will be purchased.

Estimated Cost:

Estimated by Division of Architecture.....$264,000

Equipment to Be Furnished by Correctional Industries Revolving Fund:

1. Chilled sweet water refrigeration unit of adequate capacity to provide for concurrent cooling of five hundred (500) gallons per hour of raw milk from ninety-six (96) to forty (40) degrees Fahrenheit and five hundred (500) G.P.H. of pasteurized milk from sixty-eight (68) to thirty-eight (38) degrees. Unit to be connected to existing freon compressor and must have a reserve icemaking capacity of not less than fifteen thousand (15,000) pounds at 2½" thickness on coils. Unit to be complete with necessary controls, pumps, circulating lines, etc.

2. One high temperature short time pasteurizing unit (HTST), completely installed with necessary valves, control system, pumps, and clean in place washing system. Must be capable of cooling milk after pasteurization to thirty-eight (38) degrees Fahrenheit by using chilled sweet water in plate cooler. All piping and pumps must be supplied to hook up to homogenizer and bulk tanks. Five hundred (500) G.P.H. capacity.

3. One milk homogenizer, having continuous minimum rated capacity of five hundred (500) G.P.H. comparable to Creamery Package Model 3DD3.

4. One plate type raw milk cooler capable of cooling five hundred (500) G.P.H. from ninety-six (96) degrees to forty (40) degrees, using chilled sweet water coolant. Complete with controls.

5. Two each fifteen hundred (1,500) gallon capacity, stainless steel, chilled water refrigerated milk storage tanks, placed with inlets and cleaning entrance inside the processing room and the balance of the tank outside the existing structures on concrete supports.

6. Stainless surge tank of 100 gallons capacity. Tank shall be 24" from the floor and have two can filler outlets, and S.S. piping to bring milk from homogenizer to the tank.

While this project was discussed at length, the committee took this item under submission primarily because no agreement had been reached between the Department of Finance, the office of the Legislative Analyst, and the Department of Corrections regarding the scope of this project and its ultimate cost.

In taking the project under submission, the committee went on record as favoring the plan and the philosophy in back of the proposed dairy modernization with the understanding that the final vote on the amount of money for the project would be taken when the revised program is again presented to the committee at its next meeting.

The committee also emphasized the point that in no event in the contemplated revision of the project should the amount requested exceed the $264,000 figure, which figure would be exclusive of the estimated $100,000 for equipment to be furnished by the Correctional Industries Revolving Fund.

It should also be noted that Mr. Dahms suggested that the limitation be based upon a realistic period of amortization, rather than the $264,000 figure. However, no action was taken by the committee on this suggestion.

Also, in the course of the discussion on this project, the committee consultant was instructed to prepare for consideration by the full committee a policy statement to serve as a guide for the committee in the consideration of new or expanded agricultural programs at state institutions, the products of which could possibly be in competition with free enterprise production.

Department of Corrections and The University of California Extension Service Combined Research Projects for 1964–65

1. Leukemia Research

San Quentin and Folsom are supplying limited numbers of animals to Dr. Theilen for experimental work with leukemia and maintaining animals as control animals in the institution herds. (San Quentin and Folsom herds have been tested and found to be leukemia free.)

Expansion of this program is in the final planning stages and will include the Deuel Vocational Institution herd. It is proposed that corrections will maintain 100 mature animals for the university and will be reimbursed from federal funds for their maintenance. This will give Dr. Theilen a more usable supply of animals in varying stages of pregnancy.

2. Silage Feed Trial—Deuel Vocational Institution

The Deuel Vocational herd was used to compare relative feed valves of silage and alfalfa hay. This trial is scheduled for a repeat this winter and if results are consistent, will probably be the basis for a change in the university's recommendations on silage feeding.

3. Hay Wafer Feed Trial—Deuel Vocational Institution

The Deuel Vocational Institution herd is presently being used to compare the feed values of Food Machinery Company wafered hay and baled hay. This test is about 50 percent complete and the Extension Service has drawn no conclusions as yet.

4. Low Protein Feed Grain Trial—Folsom

The Folsom herd is being used to test the feed values of low protein grain.

5. Alfalfa Variety Test Trial—Correctional Training Facility, Soledad

Productive capacities of various alfalfa varieties are being compared.

6. Corn Variety Test Trial—Deuel Vocational Institution

Productive capacities of various corn varieties were compared in 1964.

7. Corn Fertilizer Test Trial—Correctional Training Facility, Soledad

Values of different commercial fertilizers were compared in 1964.

DEPARTMENT OF MENTAL HYGIENE

Napa State Hospital

1. Close Out Poultry Operations

Under date of July 27, 1965, the Department of Mental Hygiene requested the Department of Finance to secure permission from the committee to discontinue the poultry ranch operations at Napa State Hospital.

In making the request, it was pointed out that this particular poultry enterprise has been marginal financially for several years but was conducted as long as several patients were being kept busy. The treatment program now makes this unnecessary. It was also pointed out that all other state institutions have discontinued poultry operations because of the lack of placement possibilities for trainees and obsolescence of equipment.

It is proposed that Napa State Hospital would discontinue all of its poultry operations by July 1, 1966; egg production would be discontinued by approximately April 30, 1966. It is further understood that the two incumbent employees will be placed in other positions at the hospital by July 1, 1966.

The committee concurs in the department's request to close out poultry operations at Napa State Hospital as scheduled.

STATE COLLEGES

Fresno State College

1. Fence Irrigation Reservoir $2,500

Protection of the State of California from possible liability claims if any injuries or deaths result from people entering the reservoir area. As the area around the college builds up an increasing number of children will be seeking play areas away from home. The reservoir must not become a public swimming or fishing pool.

Description:

A recently constructed irrigation reservoir 250′ x 250′ will require a security fence 6′ high with one 14′ equipment gate and one 4′ personnel gate. This will match existing protection provided for college storm drainage sump on Shaw Avenue.

A six-foot chain link or equal with 3 strand of barbed wire on top is proposed for this job. Local fence contractors have provided firm estimates.

Cost Estimate: 1,000 ft.—6′ chain link fence and three strands barbed wire @ $2.50/ft. installed $2,500

The committee recommends approval.

2. Construct Farm Machinery Shed $6,000

The requested storage will provide shelter for tractors, hay balers, discs, grain harvesters, and other farm equipment.

Description:

A pole type aluminum covered farm machinery storage shed 26′ x 90′ to match and extend existing shed. Roof height to be 20′ at eave. This building will provide shelter for tractors, grain drills, harvesters and other farm equipment.

Cost Estimate:

The estimated cost is based on recent confirmed bids and a similar type project scheduled to be constructed at Feed Mill.

2,340 sq. ft. @ $2.56/sq. ft. $6,000

While not taking a position in opposition to the proposal, Mr. Dahms, representing the office of the Legislative Analyst, did point out that at the present time there is no firm policy for or against providing cover for farm machinery.

The committee, in this case, recommends approval of the item.

3. Remodel Greenhouse Electrical and Heating Systems $10,000

The existing electrical service circuits are too close to the surface of the bench to permit use of extension cables. Relocating and modifying the existing lighting system will provide better distribution of light over the benches and ensure even, uniform growth of plants.

The installation of the hot water circulating system will replace an inadequate hot air circulating system that has proved to be deficient during winter climates.

Description:

This project includes the raising of existing service outlet lines to a height of 30″ above bench levels, relocating and modifying existing lighting systems and the installation of hot water circulating heating systems.

Cost Estimate:

A. *Heating System*

(1) 3—Instantaneous Booster—180,000 B.T.U. capacity @ $450	$1,350
(2) 300 ft.—2″ Steel pipe with 4″ Radiation Fin @ $4.00/ft.	1,200
(3) 400 ft.—2″ black-steel pipe @ $0.65	260
(4) 3—¼ H.P. hot water circulating pumps @ $75	225
(5) 3—15 gallon capacity expansion tanks @ $25	75
(6) Miscellaneous fittings	100
(7) 2—10′ x 10′ x 4″ concrete slabs for heaters	150
(8) Weatherproof covers for heaters	200
(9) Installation labor and electrical service for motors and switches	3,050
Subtotal for heating system	$6,610

B. *Relocating Existing Electrical Circuits*

(1) Labor and material @ $130 per house	$390

C. *Modification of Lighting System*

(1) 18 8-ft. 800 M.A. Outdoor Type 2 light fixtures @ $100	1,800
(2) Labor for rewiring and installation	1,200
Total for electrical services (B and C)	$3,390
Total estimated project cost	$10,000

The committee recommends approval.

Chico State College

1. Provide Well, Pump and Sprinklers $15,000

At present there are four wells on the college farm. The wells do not have the capacity for irrigating the variety of crops that are planted in an instructional program. The prior owner operated the farm with 100 percent row crop plantings. The wells are sufficient for his operation but are inadequate for the college's complex farming operations.

All of the present pumps are designed for furrow and flood irrigation. On a college farm it is important to provide the students with experience in operating all types of irrigating systems: flood, furrow and sprinkler. In order to operate sprinklers from any of our present wells, one of the pumps would have to be replaced. The area for which this pump will irrigate drains to the county road and to the road between the college farm and Navarro Ranch. A small sump has been dug and a portable pump and ditch have been installed to disburse the water to the large sump located on another area of the college farm. The prior owner owns the adjacent piece of land and they ran the excess water to another sump over property they are still operating but did not sell the college. They have refused the college this accommodation. If a sprinkler system is installed, there will be no runoff water to be disbursed to a sump.

Description:

This project consists of drilling one 12-inch diameter well, 400 feet of casing. Purchase and install 6-stage, 90-pound pressure pump, 40 H.P. motor and electrical panel. Purchase an aluminum sprinkler distribution system (pipe, valves, sprinkler connectors, etc.), needed to irrigate 100 acres.

Cost Estimate:

Drilling new well, 12 inches in diameter, 600 feet deep, with 150 feet steel casing, installed	$3,600
Pump, 6 stage, 90 pound pressure with 40 H.P. motor and panel	3,700
Aluminum sprinkler distribution system	5,300
Miscellaneous controls and measuring devices	2,400
Total	$15,000

The committee recommends approval.

2. Construct Seed and Fertilizer Storage Building $6,000

This building would be used primarily for the storage of seeds which are raised on the college farm. It would have to be constructed to be rodent free and meet the specifications of the Federal Government for

grain and seed storage. The building would also be used for laboratory crops, cereal crops, and directed work. The design of the building would be to lend itself to the storage of seeds in sacks, not bulk, as we have bulk storage already available. During the past year over $800 was spent for commercial storage. Additional money was spent in hauling the crops to a commercial storage facility. This building would also provide a locked area in which to store fertilizers and other inventory items. There is no such facility in the master plan of buildings for the college farm.

Description:

This project consists of constructing a Butler type, all metal (aluminum or steel) building with a concrete floor, 36 feet wide by 60 feet long, with a 12-foot door in each end, side walls 8 feet high, gable roof 13 feet to peak, roof ventilators, and plastic skylights every 12 feet. It should be a clear span building.

Cost Estimate:

Concrete floor and foundation, 40 cu. yds. @ $15	$600
Commercial building (Butler, Stran Steel, etc.)	4,320
Electricity, service outlets for conveyors, lights, and equipment	1,080
Total	$6,000

Labor and equipment available in the farm staff. The committee recommends approval.

California State Polytechnic College

1. Bulk Feed Receiving at Feed Lot $1,800

In an attempt to provide more efficient delivery of feed it is anticipated that all of the units on the campus will be remodeled to take care of bulk delivery. At the present time all the feed is delivered in individual sacks which means added labor at the feed mill and at the unit. Bulk delivery means reduction in labor costs, more efficient service and improved instruction.

Description:

Construct bulk feeding delivery facilities at the beef unit. This will include putting in three heavy duty gates in the existing corrals, installing a drag conveyor in the existing feed room and unloading spout in the roof of the building. It will be necessary to redrock the driveway areas.

Cost Estimate:

3 4-rail gates 16' wide	$300
50 cu. yd. redrock @ $1.50/cu. yd.	75
Electrical material	250
Electrician student assistant	175
Bulk feed drag conveyor	1,000
Total	$1,800

The committee recommends approval.

2. Pole Barn at Beef Unit $3,330

For some time now there has been a need for additional hay storage at the beef unit. Under the present conditions a good deal of hay is lost due to moisture and to present outside stack is an unsightly view at a unit so often toured by visitors. Under the present conditions a lot of extra labor for moving hay from the feed mill to the beef unit is required when it could be stored there originally.

Description:

Pole type barn built and attached to the east end of the existing barn. 20′ x 80′ x 18′ high.

Cost Estimate:

Pole type barn 20′ x 80′ x 18′, @ $1.25	$2,000
Lights, etc.	505
Labor	750
10 percent State Employees' Retirement System	75
Total	$3,330

3. Pole Barn at Dairy Unit $3,330

There is a lack of sufficient storage for straw and hay for dairy. Existing barns will not hold enough hay for the feeding period required. Attempts to cover straw with tarps in the past have been expensive and there is too much loss. Straw is needed regularly and it is next to impossible to remove bales without uncovering entire stock. Present tarps require crane to put in place. Straw stock needs to be readily accessible for students to do bedding at their assigned areas, i.e. bulls, calves, cows, etc.

Description:

Construct pole type hay and straw shed with metal roof. It is to be built in the area north of the main feed barn. Approximately 20 x 80 x 18 high. Open on all four sides following the type constructed by San Antonio Construction Company.

Cost Estimate:

Pole Barn 20′ x 80′ x 18′ @ $1.25/sq. ft.	$2,000
Lights, etc.	505
Labor	750
10 percent State Employees' Retirement System	75
Total	$3,330

4. Two Pole Barns at Cheda $2,840

At least 50 tons of alfalfa hay is used in each area every year. Without cover there is a loss from spoilage due to rain and bleaching due to sun. Tarpaulins have been tried but find they are expensive and wind and rain cause high damage and mortality to tarps. It is nearly impossible to keep opening up tarps for the removal of hay every day.

Description:

Construct two pole barns (12 x 36 x 16) for hay storage. One for the dry cow area, one for the calf area. Each unit will be 12′ x 36′ x 16′ with gable roof of corrugated sheet metal.

Cost Estimate:

2 pole barns 12′ x 36′ x 16′ @ $1.50/sq. ft.	$1,296
200 cu. yd. redrock @ $3.00/cu. yd.	600
Pole lights (calf area)	504
Labor	400
10 percent State Employees' Retirement System	40
Total	$2,840

College officials pointed out that when the various pole barn projects were presented provisions were made for concrete pads. However, at some point in the budget process funds for the pads were deleted from the items.

When the committee met at the San Luis Obispo campus, officials asked for permission to install concrete pads at the pole barns if it could be accomplished within the amount budgeted or from funds from some other source.

In approving these three pole barn projects, the committee granted permission for the college to install concrete pads if the amount budgeted is adequate or if funds from another source can be made available.

Kellogg-Voorhis Campus at Pomona

1. Alterations to Swine Unit $5,100

Shelter Pens—It is proposed as a preliminary to later modification of the entire feeder unit to convert two pens (pens 1 and 2) into four pens each. Each new pen designed to accommodate 1 litter of 8–12 pigs. Each pen would now be approximately 5′ x 16′ in dimension. Three 6-inch concrete walls 36″ high would divide the present (16′ x 20′) into 4 pens of equal size. The front of the present pens would be modified so that each pen would have a 5 foot gate. The waterer would be placed at the front of the pen to encourage dunging on the slotted floor area.

The floor of the front 6 feet of each pen would be modified to be a 6′ x 5′ slotted floor area for drinking and dunging. The slots would be ¾ inch wide space between steel "T" bar metal slats. The "T" bar slats would run parallel with the length of the 5′ x 16′ pens each slat being 6 feet long. Spacing of the slats would be insured by welding a steel strap across the ends to hold them in the ¾ inch relationship. The entire slotted section would sit on a concrete sill on the rear side and a steel angle iron seam on the front. This steel beam would make up the front of the pen under the gate.

The area under the slotted 6-foot section would be a concrete floor sloped to the present gutter so that dung, urine and water would run to the gutter where it could be washed away as it is presently done. A diagram of one modified pen is attached.

Farrowing Unit—The present swine farrowing shelter can be enclosed by lowering hinged doors. During the winter farrowing season,

the doors can be lowered to make the shelter warm and free from drafts. The north end of the shelter is not enclosed. At the present time this end is covered with tarpaulin material to provide the desired protection.

Since the tarpaulin has been in place since 1958, when the shelter was constructed, it now needs to be replaced. Furthermore, since the use of tarpaulin does not meet college standards for appearance, it is proposed to cover this area with corrugated sheet metal of the same type as the building sides and roof construction.

The end of the building would be framed with 2 x 4 material. Corrugated sheet metal would be fitted over the framing. The alley would be closed by 2 large doors hinged on the sides and reaching to the roof. The doors, aluminum framing, and corrugation for tightness to ensure better operation. A bolt would be fitted to each door which can be dropped into the soil below the door to hold the door in an open condition to prevent damage to the door.

Cost Estimate:

20 ea. 2" x 4" x 10' fir	$16
15 ea. 1" x 12" x 12' pine #2 grade	32
25 ea. corrugated sheet metal sheets 12' x 26"—26 guage	117
2 ea. Aluminum doors	300
Catches, hinges, hardware	25
Nails	5
8 ea. 3' x 4'6" chain link gates 3/hdw. @ $32.50	260
24 yd. concrete, 6 sk. waterproof mix @ $14.50	348
13 ea. Fabricated Corr. Panels 4' x 11'8" @ $125.00	1,625
14 sheets ¾" x 4' x 8', 768 sq. ft. DF. Ext. Plywood @ $0.24	108
208 ea. ½" x 5" anchor bolts & shields @ $0.25	52
208 ea. ¼" x 3" anchor bolts & shields @ $0.20	42
16 ea. 28" x 6', "Cor-Ten" grating panels @ $63.75	1,020
200 LF 2" x 2" x 5/16" angle iron @ $12.20 CW. (784#)	96
84 LF 1½" galv. pipe @ $0.45	38
Miscellaneous welding materials	35
Total	$4,119

Labor:

Carpenter	$153
Concrete refinishing, 44 hrs. @ $4.25	187
Concrete removal, 80 hrs. @ $3.20	256
Plumber, 40 hrs. @ $4.50	135
Grating and gate installation, 38 hrs. @ $3.20	122
Welder, 32 hrs. @ $4	128
Total labor	$981
Total	$5,100

The committee recommends approval.

2. Convert Shed for Horeshoeing $2,500

Currently, facilities and equipment are not available for shoeing or general foot care for the college's horses. This area will be used by staff

and students throughout the year for this work. All horses in the herd must have regular and continuing attention.

Description:

Convert an existing concrete-walled shed facility for use in shoeing horses and to supply general needs for the farrier. Includes forges, chimney, anvils, vises and storage space.

Cost Estimate:

Blacktop 2,000 sq. ft. @ $0.25	$500
Removal of existing interior and cutting four stock holes in roof	140
Hood stove piping with shield and caps and asbestos rings	800
Lumber for 10′ x 30′ shed roof	275
Carpenter and helper (labor)	250
4 ea. 2½″ pipe 10 ft. lengths with: 6 ea. 2½″ T's and 2 elbows	25
2 yds. concrete—5 sk. mix @ $12.25	25
Installation of pipe and connections	35
Electrical materials	200
Electrician (labor)	250
Total	$2,500

The committee recommends approval.

California State Polytechnic College Need for Portion of Camp San Luis Obispo *

* (A Summary Statement of Presentation by Harold O. Wilson to the Senate Fact Finding Committee on Agriculture ot its meeting on the San Luis Obispo Campus August 18, 1965)

The undergraduate enrollment in agriculture at the San Luis Obispo campus of the California State Polytechnic College is one of the four largest of all colleges and universities offering agriculture in the United States.

The growth and success of this program is attributed to a large extent to the unique methods of instruction which are utilized. The unique feature is that theory is put into practice by the students. The educational objective of Cal Poly in all of its majors is to stress application of theory through instruction—not research.

In the field of agriculture, sufficient acreage is required to provide practical farm experience for students. Such an operation should be of the size and scope to provide meaningful management experience. Keeping this thought in mind, I wish to point out to you the figures which show the changing relationship between enrollment and campus farm acreage that has occurred over the past few years.

Year	*Agricultural enrollment*	*Farm acreage* [1]
1940	300 (approximate)	1,115 acres
1946	726	1,115 acres
1950	1,333	2,602 acres [2]
1955	1,175	2,602 acres
1960	1,207	2,602 acres
1961	1,291	2,602 acres
1962	1,396	2,602 acres
1963	1,513	2,602 acres
1964	1,620	2,602 acres

[1] This acreage is composed of both range and tillable land available on campus for farm operations. No off-campus, leased land is included.

[2] This acreage is based on a report of September 14, 1961, prepared by the San Luis Obispo Campus Agriculture Division.

Of the 2,602 acres available to the agriculture division on September 14, 1961 for instructional use, 2,140 acres was range and pastureland and 462 acres was tillable land of which approximately 160 acres was under irrigation at that time. Since 1961, approximately another 120 acres has been placed under irrigation as a result of the devlopment of a three-year irrigation line distribution project which the Senate Fact Finding Committee on Agriculture had previously approved.

With the growth of the college, there has been an ever increasing number of acres required for buildings, roads, and other uses not connected with agricultural instruction. The present average, annual enrollment of the San Luis Obispo campus is approximately 7,000 students. The ultimate enrollment set by the Trustees of the California State Colleges is 12,000. The target date for reaching that enrollment is approximately 1980. The projected growth will require the diversion of a considerable number of additional acres currently in agricultural use. The additional land needed for parking lots and roads alone is significant—particularly when it is recognized that most of such land will be level, tillable, and irrigable land.

It should be pointed out that, since the early 1950's when the agriculture enrollment explosively increased, additional farm and rangeland was leased from private and public owners to supplement that on campus. These acreages are not included in the chart above. The California State Polytechnic College Foundation was used as the instrument through which the leases were effected. As the population of the city and surrounding country grew, the private-owned land that had been under lease became unavailable and, since the latter part of the 1950's the land leased for instructional use has been confined to the state- and federal-owned portions of Camp San Luis Obispo. At present, the foundation has 510 acres of state-owned rangeland under lease from the State Armory Board (National Guard) and the college (state) has another 122.6 acres of tillable and irrigated pastureland under lease. This lease is also with the State Armory Board. In addition to these acreages leased from the State Armory Board, the college also has 582 acres of federal-owned land under 25-year lease. Of the 582 acres, approximately 350 is tillable and is now or will be under irrigation. It is the plots of 122.6 acres and 582 acres for which $200,000 in state funds was appropriated in about 1959 for the purposes of leveling, fencing, and bringing under irrigation. Your committee—the Senate Fact Finding Committee on Agriculture—several years ago reviewed the development project and approved the expenditure of the appropriation.

A study was completed in June of 1965 on the need for land to accommodate the some 2,200 agriculture major students projected to be enrolled when the enrollment of the college reaches 12,000 by 1980. Based on conservative but realistic averages of agricultural production for this area and on the experience of 30 years of practice in the conduct of what has been demonstrated to be a successful and unique agricultural instruction program in higher education, the following summary table expresses a conservative need for additional land.

Program	*Total need*	*Present available*	*Additional need*
Beef production (rangeland)	3,960 acres	2,040 acres	1,920 acres
Sheep production (rangeland)	1,000 acres	100 acres	900 acres
Crops production (tillable land)	900 acres	462 acres	438 acres
Totals	5,860 acres	2,602 acres	3,258 acres

It is the professional judgment of those agricultural staff specialists who made the study that the above needs could be met by the acquisition of several combinations of state- and federal-owned parcels of rangeland, plus the state- and federal-owned land which the college currently has under lease as described above. One combination would be to acquire all of the state-owned rangeland, plus the state- and federal-owned parcels that are currently under lease for farming operations and the federal-owned parcel of rangeland identified as B-4 on an Army Engineers Camp San Luis Obispo Tenancy Map, undated but of recent origin. Parcel B-4 is needed particularly in order for the college to develop water storage facilities on Pennington Creek, which flows lengthwise of this rather long parcel of land. The college has recently acquired rights to surplus water from the Creek during the rainy season. This water would be stored for use on the farmland during the dry season. The total acreage of these parcels is listed below.

State-owned Land:		
Parcel No. 1	1,177.00 acres	
Parcel No. 2	907.00 acres	
Parcel No. 6	507.00 acres	
Parcel No. 7A	99.20 acres	
Subtotal		2,690.20 acres
Federal-owned Land:		
B-3 (Parcel No. 1)	587.00 acres	
B-4 (Total)	593.49 acres	
Subtotal		1,180.49 acres
TOTAL		3,870.69 acres
Another combination would be:		
State-owned Land:		
Parcel No. 7A	99.20 acres	
Subtotal		99.20 acres
Federal-owned Land:		
B-1 (Total)	112.50 acres	
B-3 (Total) *	2,495.92 acres	
B-4 (Total)	593.49 acres	
Subtotal		3,201.91 acres
TOTAL		3,301.11 acres

* Consists of three parcels, including Parcel No. 1 (587 acres) which is listed in the first combination under federal-owned land as shown above.

It is anticipated that the Legislature eventually will be required to take some official action on the dispostion of the state-owned section of Camp San Luis Obispo and the acquisition of any of the federal-owned land which the college may request and justify securing. In view of this probable future consideration by the Legislature, it was felt that your committee should have the information presented to you today. California State Polytechnic College will appreciate the support of your committee and each of you as members of the California State Senate when this matter may officially come to you for action.

EXHIBIT No. 2

AGRICULTURAL TRAINING

in the
Department of Corrections
Department of the Youth Authority

A Report to the
SENATE FACT FINDING COMMITTEE ON AGRICULTURE
December 1965

The Youth and Adult Corrections Agency
Richard A. McGee, *Administrator*

SUMMARY

Inmates Involved

An average of about 500 inmates is continuously assigned to farm training programs, 100 of them in the Youth Authority and the remainder in the Department of Corrections.

Kinds of Farming

Activities include animal husbandry, dairy, vegetable crops, field crops, orchard, and general vocational agriculture education.

Effects Extended

Products provide raw materials for canneries. Canneries train additional inmates. Their product results in further training of inmates in warehousing, storekeeping and accounting. Maintenance of farm and cannery equipment provides practical experience for student welders, mechanics, etc.

Training Benefits

Placement in agricultural employment. Significant numbers of inmates have been placed in direct agricultural employment. For example: 43 adult farm trainees were placed on farms this summer; 34 adult parolees were working in dairies and 46 of the vocational agriculture students were employed in agriculture or related fields.

Related employment. Heavy equipment operation is also fundamental to the construction industry. Other opportunities exist in implement sales and service, feed and farm supplies, meatpacking, general mechanics, etc.

Development of good work habits, physical fitness and understanding the need for teamwork are other benefits. Vocational classes may stimulate renewed interest in general education for some youthful wards. Working with growing plants and animals has for some a unique rehabilitative effect.

Alternative

Without these agricultural programs, the inmates now assigned might well be idle. The Department of Corrections continues to have more inmates than program capacity. Any constructive employment is better than none.

Benefits Taxpayers

Farm operations help defray the cost of other training programs, make economic use of land needed as buffer zones and which would require maintenance, and reduce the cost of institutional operation.

This report is provided in response to questions raised by the members of the Senate Fact Finding Committee on Agriculture at its meeting of August 17, 1965 and the request of the committee executive secretary in his letter to the Administrator of the Youth and Adult Corrections Agency dated September 1.

Training in agriculture is conducted by both the Department of Corrections and the Department of the Youth Authority.

An average of about 500 inmates and wards is continuously assigned to farm training programs. Peak harvest periods require additional assignments.

Most of those assigned are inmates of Department of Corrections institutions. That department has a variety of productive agricultural enterprises operated by its Division of Correctional Industries. In addition, a few inmates are involved in agricultural research at Tehachapi.

The Youth Authority has one Vocational Agriculture Training Program located at the Preston School of Industry. The supervisor of education is in charge. There are 100 wards assigned to the program. This, too, is a productive enterprise.

The values of these agricultural operations are many. Fitting the ward or inmate for employment is one. Effectiveness of the training may be partially measured by actual farm placements. It must be noted, however, that no vocational training course anywhere results in 100 percent primary placement.

The possibilities of related placement, not generally determined in this study, must also be considered. For example, the inmate who learns to operate heavy equipment doing farm bulldozing, grading and cultivating may find himself employed, instead, in the construction industry.

The training provides other benefits that may significantly affect employment and rehabilitation. The inmate improves his physical condition, learns that he can do hard work and like it, learns the importance of getting the job done right and on time, and how to work for and with other persons. Related academic training may also develop a new interest in furthering his education.

Working in the soil, seeing the crops come up and caring for animals have unique rehabilitative effects on some inmates and wards.

In evaluating the agricultural program, there are other very practical considerations.

(1) With a confined population in the two departments of 31,000 every constructive activity must be encouraged. The alternative to agricultural training is far more likely to be NO training than some theoretically better training.

Lack of program obviously severely hampers efforts at rehabilitation. But it is worse than that. Idleness is destructive to inmate morale and frequently at the root of inmate disturbances.

(2) The agricultural program has economic advantages. The inmate contributes to his keep. Agricultural operations make economic use of lands required to buffer institutions from encroachment. Incidentally, these lands would require some other nonproductive maintenance if not farmed. The food production lowers institutional operating costs and also helps defray the costs of some other training programs.

The remainder of this report is divided into four parts: The Department of Corrections' dairy operations, Corrections' general farming activities (both prepared by Robert H. Lawson, general manager, Correctional Industries), Youth Authority vocational agriculture education (prepared by T. W. Kelly, education program supervisor) and, finally, two reprints describing the agricultural experimentation at the California Correctional Institution at Tehachapi.

DEPARTMENT OF CORRECTIONS' DAIRY OPERATIONS

1. How effective is correctional industries in exposing inmates to their dairy program?

An average of 135 inmates are continuously assigned to dairy projects in the Department of Corrections. Because of the number of inexperienced trainees involved, coupled with the problems of institutional scheduling, the number of inmates assigned is larger than would be the case in commercial dairies. Nevertheless, schedules are established which provide each inmate with enough responsibility to try to inculcate work habits which will prepare him, both physically and mentally, for a job in the dairy industry.

Not all inmates at the institutional level who wish to work on dairy enterprises are able to do so because of institution problems or because of the custodial requirement that all men working on the dairies must be of minimum custody. Correctional dairies are located at San Quentin, Folsom, California Institution for Men, Chino, Correctional Training Facility, Soledad, and Deuel Vocational Institution, Tracy, and produce 159,000 gallons of milk per month for distribution to 16 state institutions.

2. What kind of training are these 135 inmates exposed to?

Two dairies have modern HTST type of pasteurizers, and the other three have batch type. The latter are in need of being upgraded for effective training purposes, although still satisfactory from a production point of view.

Milking equipment is all mechanical and equivalent to what is found in outside industry, except for the lack of pipelines to transport the milk from the machine to the tank in four of the installations.

Babcock testing equipment, homogenizing equipment, and cream separators are modern and in regular use by inmates, making it possible for them to learn milk standardization and quality control necessary for the production of grade A fluid milk.

Good quality milk cows are used to train assignees to milk, care for animal health, artificially inseminate, and feed.

All actual work is accomplished by inmates, with the exception of instruction or in emergencies. The civil service staff is supervisory only.

Trainees normally begin their training in the less technical jobs and progress through the entire range of responsibilities which their capabilities and length of assignment will allow.

Because each Correctional Industries dairy has a quota to meet in order to supply class I milk to consuming institutions, it is possible to train inmate assignees under conditions similar to those in outside industry.

3. How do inmates respond to the dairy program?

Morale generally is good on all the dairy functions, with job interest ranked as follows:

a. Pasteurizing and milk processing
b. Animal care and handling
c. Feeding
d. Cleanup labor

Inmates with previous farm experience of any kind, as a rule, respond best to dairy training, which normally requires split shift work, as well as some heavy labor. However, inmates with no serious previous labor experience often find to their surprise that after an initial break-in period they can perform on heavy labor jobs and feel good at the end of the day.

Jobs which challenge the inmates, such as pasteurizing (which requires a state license), artificial insemination, and Babcock testing generally attract the more capable men, and conversely, this is the only type of man who can be trusted with this type of responsibility because of the importance of the task.

4. What are the job opportunities for trainees?

Jobs which inmates are being successfully released to are as follows, ranked according to the highest rate of employment:

Milkers
Pasteurizers—Creamery man
Artificial Inseminator
Milk Tester for Dairy Herd Improvement Association

Job opportunities for milkers are more readily available than other classifications.

Excellent placement opportunities for milkers exist in the Petaluma-Santa Rosa area, and records show that inmates with suitable training and experience can almost invariably find employment there. The Los Angeles milk shed area, primarily around Chino and Artesia, has proven to be another dependable employment location.

Wages vary from $350 a month to $660 a month, with the southern part of the state averaging approximately $200 per month more than the north.

5. How effective has placement of dairy trainees been?

As of October 14, 1965, 34 parolees who have had training on industries' dairies are working in outside dairy industry. These men have been on parole from 1 to 18 months.

In addition, 24 men were discharged within the past two years from institutions or from parole while on dairy jobs.

6. How effective is the ex-inmate performing in the dairy industry? The following case histories are illustrative:

Smith, A 73658

Paroled June 15, 1965. Still on parole. Working at the Apple Valley Dairy, Apple Valley, California, as a pasteurizer and route salesman. The employer states that he is very pleased with Smith's work and is advancing his pay and responsibility.

Moore, A 73492

Paroled June 8, 1965—discharged from parole July 17, 1965. Because of his dairy training, he had several job opportunities offered by the Farm Labor Office and the Dairymen Workers Association in Modesto. At the time of discharge was working for the Mehelia's Ranch, Davenport, as general dairy ranch hand.

Ridenour, A 73107

Paroled May 8, 1963, discharged December 22, 1964. Employed by Mr. Zimm, 3001 Summerfield Road, Santa Rosa, as milker manager of small dairy. Employer states subject is able to handle whole job by himself and plans are to increase herd and responsibilities.

Meon, A 57444

Paroled October 26, 1961, discharged February 11, 1964. Employed by the Triangle Dairy Ranch, Helendale, as milker and hay hauler. Employer states he is above average in job performance.

Case histories indicate that the dairy-trained ex-inmate has the vocational tools to succeed on parole if his personal stability allows him to use them effectively. Also, placing of minority group members in the dairy industry is a problem, and tends to cut down on the number of actual placements.

Conclusions:

In order to help get maximum return from the investment in these dairies, all possible effort should continue to be made to assign men with an agricultural background as trainees and to assign them to training as soon as their custody will allow.

The fact that 34 parolees are presently working in the industry and that another 24 have been discharged in the past two years while working in dairy jobs indicates that correctional dairies are having an impact on inmate assignees. However, the fact that 135 men are continuously assigned with an average assignment of approximately six months indicates that there is room for improvement.

An important product that is a function of correctional dairies is the training in sound work habits which the inmates receive whether they become dairy employees or not.

This whole program is self-supporting and in addition supplies financial support to less profitable correctional industries.

CORRECTIONS' GENERAL FARMING ACTIVITIES

The following information is supplied as a supplement to the memo sent to you earlier covering the training values in Correction Industries' dairies. This report covers the remaining farm programs including the hog ranches, slaughterhouses, field crops, and vegetables.

1. How many inmates are exposed to farm training in areas other than dairies?
   (a) Vegetable crops—34 inmates.
   (b) Field crops and orchards—185 inmates.
   (c) Hog ranch and slaughterhouse—33 inmates.

This is an average number of inmates who are continuously assigned to these projects. Seasonal demands at harvest time increase the number assigned for limited periods by 30 inmates.

These men work in production settings with responsibilities closely resembling those which they would be expected to assume when placed on similar jobs upon release.

Vegetable crops are produced only at the California Institution for Men and they are consumed by the local institution as fresh produce or canned in the CIM cannery.

Hog ranches and slaughterhouses are located at California Institution for Men, California Training Facility, and Deuel Vocational Institution. They produce all the fresh pork used at these institutions plus that used at the California Medical Facility.

The field crops projects located at DVI, CTF, and CIM are integrally linked with the animal enterprises and produce the majority of the feed consumed by the animals at these institutions.

Orchard operations are limited to Folsom where peaches are produced for the local cannery.

2. What kind of training are these 252 inmates exposed to?

Tractors and related equipment cover a broad spectrum of production equipment such as D-7 Caterpillars with dozer and other heavy tillage attachments, light cultivator tractors, hay and silage harvesting equipment, and graders. While training on this equipment is farm oriented, many of the skills learned are fundamental in the construction industry as well.

Orchard equipment and techniques are modern and comparable to a standard operation.

Good quality swine are used to train assignees to breed, feed, and care for all stages of pork production including slaughtering.

A welding, tractor mechanics, and general farm maintenance training program is in operation at each institution under a production setting which encourages quality work and speed of operation.

Trainees are normally assigned to the smaller pieces of equipment or less technical jobs initially and progress through the entire range of responsibilities which their capabilities will allow.

3. How many inmates respond to the Farm and Hog Ranch program?

Interest and morale generally are good in all areas except where menial tasks are involved. Inmates reflect the same feeling that the average American worker does, in that he wants to mechanize anywhere possible.

Supervisory personnel recognize this mechanization trend and are constantly upgrading their operations to provide the inmate with challenging work and a better chance to learn skills which will be similar to outside agricultural industries.

Strong inmate interest is evident in the care and management of the hog ranch brood stock.

Job interest ranks as follows:

(a) Farm and tractor mechanics.
(b) Tractor and equipment operations.
(c) Animal care and handling.
(d) Feeding.
(e) Cleanup labor.

The farm maintenance program has always been a valuable supplement to the vocational welding classes because it provides an excellent on-the-job application of classroom learned skills.

4. What are the job opportunities for trainees?

Jobs which inmates are being successfully trained for are as follows:

Farm tractor and equipment operations.
Tractor mechanics and general maintenance men.
Irrigators and general farmhands.
Peach orchard pruners and pickers.
Hog ranch herdsman and slaughterers.

A large percentage of the men placed in farm jobs are placed through the State Employment Service. The cancellation of the bracero program materially increased the farm labor job opportunities in 1965 and apparently this trend will continue. It is noteworthy that people of minority races are readily accepted in agricultural pursuits including slaughterhouse work, so this is not as large a hindrance in placement as it is in other vocational fields.

5. How effective has placement of farm trainees been?

Forty-three farm trainees were placed during 1965 in the farm labor release program to help relieve the farm labor shortage. Because additional men, who were trained in other areas of the institutional program, were placed in farm jobs during this period, it would indicate that there are more opportunities for placement than there are trainees to fill them.

6. How effective is the ex-inmate performing in agriculture and related enterprises?

The following case histories are illustrative:

Farm Labor

Nishiyama, George H. A62078
Paroled January 26, 1962—Discharged April 26, 1963
Employer—Henry Avocado Company, 2008 East Hill Street, Escondido
Employer states that because of the above average performance of Nishiyama, he has been offered year-round employment on his avocado orchard.

Mechanic

Cosby A70273
Paroled August 11, 1965—Still on parole
Employer—Musgrabe Crane Company, Modesto, California
Employer states that because of Cosby's capabilities he can assure him stable employment.

Meat Packer

Bjorquez, Gilbert A36248
Paroled July 10, 1958—Discharged April 10, 1961
Employer—Globe Meat Company, 11200 Kewen Street, San Fernando
Mr. Catz, owner of the above company, spoke very highly of subject's work.

Conclusions:

The seasonal nature of California's farmwork creates both economic as well as social problems for parolees in this kind of work. The swing to mechanization in agriculture as a whole will help to reduce this problem, but it will also require that the institutions mechanize along with industry in order to provide relevant training.

REPORT ON PRESTON SCHOOL OF INDUSTRY AGRICULTURAL TRAINING PROGRAM FOR SENATE FACT FINDING COMMITTEE ON AGRICULTURE

The Department of the Youth Authority has one (1) vocational agriculture training program in operation. The training program is at the Preston School of Industry, located on the outskirts of Ione, Amador County, 38 miles southeast of Sacramento. Preston has a capacity of 846 boys with an age range of 15–18 years.

The staff of the educational division consists of 45 teachers and 4 administrators. This includes 19 academic teachers, 4 arts and crafts teachers, 1 music teacher, 1 business education teacher, 1 teacher-librarian, 5 instructors in recreation and physical education, 14 vocational instructors, a supervisor of education, 2 supervisors of academic instruction, and 1 supervisor of vocational instruction. All teachers, instructors and administrators, are fully credentialed by the California State Department of Education.

The educational program consists of a regular academic program for those students who are operating at or near grade level, a remedial education program for those operating slightly below grade level, a special education program for the severely educationally retarded, and a vocational education program.

Vocational Agriculture Training Program

The vocational agriculture training program is under the direct supervision of the supervisor of education. The farm manager and two (2) instructors in agriculture report directly to the supervisor of education. The positions attached to the farm training program are as follows:

1. Supervisor of education
2. Supervisor of vocational instruction
3. Farm manager
4. Instructor in agriculture—animals
5. Instructor in agriculture—crops
6. Head dairyman
7. Dairyman
8. Dairyman
9. Hog unit operator
10. Vegetable gardener
11. Group supervisor—farmer
12. Group supervisor—irrigator
13. Group supervisor—farmer

14. Group supervisor—farmer
15. Blacksmith
16. Farm hand
17. Farm hand
18. Relief group supervisor

There are 100 wards assigned to the vocational agriculture training program. Fifty (50) wards are quartered in the farm company, which is apart from the institution proper and adjacent to the farm area; another 50 wards are assigned to farm squad and work on the farm on eight-hour shifts.

In the agriculture program classroom, laboratory, and on-the-job instruction is given the student in poultry, hog raising, dairy, vegetable gardening, or general farming. Two instructors in agriculture are responsible for the classroom and laboratory instruction, while other farm staff supervise the students work experiences.

Length of Time in Program

The average length of time wards are enrolled in the vocational agriculture training program is six (6) months.

The main objective of the division is to offer a program that will give the young men at Preston an opportunity to develop good educational habits in both the academic and vocational fields. Emphasis is placed on good work habits and ability to get along with people. Motivating and developing the desire to achieve in whatever field the student may be working in, are major tasks of the teachers.

At the request of the Senate Fact Finding Committee on Agriculture, we have been asked to determine the employment of Youth Authority wards as related to their vocational agricultural training experience at Preston.

One hundred seventy-one (171) cases were reviewed to ascertain the type of work experience held while on parole following release from Preston. The cases reviewed had been enrolled in Preston agricultural training program (assigned to the farm company or the farm squad). The cases had been released from Preston to parole between the period of July 1, 1964 to June 30, 1965.

	Yes *	*No* †	*Total*
Farm Co.	27 Cases (30%)	64 Cases (70%)	91 (100%)
Farm Squad	19 Cases (24%)	61 Cases (76%)	80 (100%)
Totals	46 Cases (27%)	125 Cases (73%)	171 (100%)

* Yes. Employed in agriculture or related work experience.
† No. Was not employed in agriculture or related work experience.

MEMBERS

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loward Way
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EXHIBIT No. 3

California Legislature

Senate Fact Finding Committee on Agriculture

VERNON L. STURGEON
Chairman

PAUL K. HUFF
Executive Secretary

Address all communications to
Room 3086
State Capitol
Sacramento 95814
Tel.: 445-2206

October 5, 1965

HONORABLE HALE CHAMPION, *Director*
State Department of Finance
State Capitol
Sacramento, California

Dear Mr. Champion:

Pursuant to instructions from Senator Vernon L. Sturgeon, Chairman of the Senate Fact Finding Committee on Agriculture, this is to inform you that the committee met on the dates indicated to review those items appearing in the 1965–66 state budget for capital outlay expenditures for structures and facilities at state institutions conducting farm operations.

Tuesday, August 17, 1965, 10:00 a.m.
Deuel Vocational Institution, Tracy
Note: While here the committee also took action on a request to discontinue poultry operations at Napa State Hospital.

Tuesday, August 17, 1965, 2:30 p.m.
Fresno State College
Note: While here the committee took action on those items appearing in the 1965–66 state budget for agricultural structures and facilities at Chico State College.

Wednesday, August 18, 1965, 11:00 a.m.
San Luis Obispo Campus, California State Polytechnic College

Thursday, August 19, 1965, 10:30 a.m.
Kellogg-Voorhis Campus, California State Polytechnic College

Participating in this series of meetings were the following members of the committee:

Senator Vernon L. Sturgeon, *Chairman*
Senator Robert J. Lagomarsino
Senator Aaron W. Quick
Senator Joseph A. Rattigan
Senator Harold T. Sedgwick
Senator Walter W. Stiern
Senator William Symons, Jr.
Senator Howard Way
Senator Robert D. Williams

Also in attendance were officials of the Department of Finance, Department of Corrections, Office of Architecture and Construction, California State Colleges and Trustees, and the office of the Legislative Analyst.

The committee, functioning pursuant to the provision of Senate Standing Rule No. 12.5, approved capital outlay items for structures and facilities for agricultural activities appearing in the 1965–66 state budget, as per the attached report, for the following institutions:

DEPARTMENT OF CORRECTIONS
Deuel Vocational Institution at Tracy

DEPARTMENT OF MENTAL HYGIENE
Napa State Hospital

TRUSTEES OF THE CALIFORNIA STATE COLLEGES
Chico State College
Fresno State College
California State Polytechnic College, San Luis Obispo Campus
California State Polytechnic College, Kellogg-Voorhis Campus

Also made a part of this report are brief statements on several combined research projects for 1964–65 being conducted by the Department of Corrections in cooperation with the University of California Extension Service. The report also includes a brief statement relative to the future land needs of the California State Polytechnic College.

Respectfully submitted,

PAUL K. HUFF,
Executive Secretary

B. 1966–67 AGRICULTURAL CAPITAL OUTLAY ITEMS

TRUSTEES OF THE CALIFORNIA STATE COLLEGES

Fresno State College

1. Deepen Farm Wells—Replace Pumps $12,000

These wells supply the water for the entire agriculture division, including irrigation for crops and the operation of the dairy farm.

Water is essential to a productive agriculture in the San Joaquin Valley and a sufficient supply of water must be maintained at all times.

The water table in this area has been falling each year and it is predicted by 1966–67 at least two wells will become inoperative because of the falling water table.

Method to perform construction will be preparation and installation by outside contractor to be administered by Fresno State College.

Specific data as to location is not available until the specific wells and pumping plants go out of service. In general, the new wells will be between 250 feet and 300 feet deep with approximately 250 feet of casing and bowl settings at 160 feet to 180 feet.

Pumping plant will be designed to produce maximum quantity of water for each specific well capability.

**Cost Estimate:*

1. Plans preparation	$–0–
2. Labor and materials	12,000
(a) 2 complete wells with 40 HP turbine pumps—each $6,000	
TOTAL COST ESTIMATE	$12,000

* Estimates by: Pump companies in Fresno area and based upon past experience.

The committee had previously approved, on an urgency basis, $1,000 of this $12,000 item for a pump replacement.

The committee recommends approval of this item in the amount of $12,000 to deepen farm wells and replace pumps.

2. Enology Building Drainage Sump $1,200

This request consists of a stainless steel tank, a screen, suction pump and a discharge line. Hose will connect with discharge pipe and the juices will be transferred to existing storage tanks. The sump, screen and pump are to be located in fermenting room No. 14 of the Enology Building in close proximity to the present fermenters.

Specifications: Installed by contract—Fresno State College personnel supervision.

Cost Estimate:

1—Approximately 200 gallon capacity 38″ diameter x 48″ deep 16 gauge Type 304 stainless steel sump tank with flat bottom and $1\frac{1}{2}$ x $1\frac{1}{2}$ x $\frac{3}{16}$″ stainless steel angle band at the top.

1—Drain sump at the bottom for the pump.

1—Model 115 Valley all bronze sump pump equipped with stainless steel shaft, nonlubricated rubber bearings, $1\frac{1}{2}$″ column and dis-

charge, column length 48", complete with top base plate for adaption to sump tank and 1½ HP, 3 phase, 60 cycle, 220/440 volt U.S. vertical ball bearing hollow shaft motor.

1—$\frac{3}{32}$" perforated stainless steel basket type screen with handles, to be mounted into sump, made removable.

The estimated cost is.....$1,200

The committee, voting by mail, previously approved this item on an urgency basis.

The committee again recommends approval of this item in the amount of $1,200 for the enology building drainage sump.

California State Polytechnic College, at Pomona

1. Fruit Orchards Development.....$12,645

This project is to develop 25 acres of orchards on the southern part of the recently acquired property known as the "Walnut Acreage". The exact location and size is defined on the Campus Master Plan which has been approved by the campus planning committee and the State College Board of Trustees.

The plan is to plant 20 acres of citrus and five acres of deciduous orchards. The citrus orchards will incorporate the latest in varieties and rootstocks, tree spacings, irrigation facilities, frost protection and management programs. Some of the acreage will be noncommercial in design, that is, it will be composed of tree types which will be planted specifically for instruction in diseases, plant breeding and botanical studies. Part of the acreage will be designed so as to provide students and staff with facilities for field testing and experimentation which can produce information for statistical treatment of testing and experimental procedures.

It is necessary to provide orchards of modern design (industry patterns) for students to learn the skills of orchard operation, management and marketing, replace acreage which will be removed due to freeway developments and the campus building program, provide an area where the most recent varieties, rootstocks, planting systems and operation equipment can be used to support the instruction program of the Fruit Industries Department.

The orchards will be designed and planted so as to make them useful to other departments which can utilize the features of this development in their programs. Classes in soils and fertilizers will be able to study the effects of various treatments on the growth and production of fruit trees. Students in pest control courses will use these orchards in the study of pest control methods and the effects of control chemicals. With the variety of irrigation methods to be installed, this planting will provide good laboratory exercises in the application of water under orchard conditions.

This project is requested as a five-year continuing program developing five acres of orchards each year. This will reduce the cost per year, provide a long-term orchard planning and development program for use by the department, and will enable the departments to make use of the most recent trends in planting of citrus orchards. It is planned to incorporate as much of the development of this land into the produc-

tion courses of the department in order for the students to be able to learn the various systems and methods used to plant orchards. Some of the trees required for the planting will be grown by the department as part of the practice in nursery operations in the fruit propagation courses. Certain specialized trees will be ordered from recognized commercial nurseries.

Cost Estimate:

ORCHARD DEVELOPMENT COSTS PER ACRE

	Operation	*1* Materials *Contract*	*2* *(College)*	*3* Labor and Equip. *Contract*	*4* *(College)*
1.	Land leveling			$50.00	
2.	Staking and surveying	$5.00		5.00	($5.00)
3.	Trees—130/acre @ $2.75	357.50	($137.50)		
4.	Planting 130 trees @ .35	6.00		45.50	(45.50)
5.	Tree care—1st year				
	(a) Irrigation	15.00		40.00	(10.00)
	(b) Weed control	8.00		15.00	(5.00)
	(c) Fertilizer	3.00		5.00	
	(d) Pest & disease control	10.00		10.00	(10.00)
	(e) Frost protection	25.00		10.00	(5.00)
	(f) Mulching (shavings)	10.00		10.00	
	(g) Pruning and tree training			5.00	(5.00)
	(h) Miscellaneous maint.	15.00		15.00	
6.	Total material costs	$454.50	($137.50)		
7.	Total labor costs			$210.50	($85.50)

8. Total costs per acre for first year:
9. Costs which college could contribute through instruction program:
   (Col. 1 and 3) = $665.00
   (Col. 2 and 4) = ($223.00)
10. Net cost per acre: $442.00

The figures in parenthesis are indicative of what the instruction program could contribute to the development of these orchards. These cannot be guaranteed, but if accomplished, would effect the savings shown in line 9.

Equipment for Development and Operation of 25 Acres of Orchards

1.	Frost Protection (25 acres)	
	a. Wind Machines	
	Relocating Tropic Breeze machine from Spadra Orchard	$1,000
	1 electric powered @ $3,500	3,500
	b. Orchard heaters—return stock type	
	20 acres—25 heaters per acre = 500 @ $8.00	4,000
	c. Heater oil storage 10,000-gal. capacity underground tank with pump	2,000
	d. Heater filling tank, 500-gal., mounted on trailer	1,500
	e. Miscellaneous equipment for frost protection including torch lighters, thermometers, heater filling hose and buckets, heater storage shed	1,500
2.	Weed Control	
	Weed oil storage, 2,000-gallon capacity, underground with pump	1,200
3.	Irrigation	
	a. Permanent sprinker installation—one sprinker per tree, plastic pipe installation. To be installed on 5 acres @ $350/acre	1,750
	b. Hose dragline type portable sprinkler system to be installed on 5 acres @ $100/acre	500
	c. Moisture sensing instruments—25 tensimeters @ $20	500

4.	Fencing of planted area—woven wire with barbed wire top; gate access to each 5-acre plot. 25 acres—perimeter distance 660′ x 1800′—5,000 ft. approx. @ $1.50/ft.	7,500
	TOTAL EQUIPMENT COSTS FOR DEVELOPMENT OF 25 ACRES	$24,950
	TOTAL DEVELOPMENT COSTS FOR 25 ACRES OF ORCHARDS INCLUDING CARE FOR ONE YEAR @ $669	16,725
	TOTAL EQUIPMENT COSTS FOR DEVELOPING AND OPERATING 25 ACRES OF ORCHARDS	41,675

Projected One-Year Increment Costs Over a Period of Five Years

I.	*First-Year Costs*	
1.	Orchard planting and first year care—5 acres @ $669	$3,345
2.	Equipment required first increment	
	a. Weed oil storage	1,200
	b. Electric wind machine	3,500
	c. Orchard heaters—125 @ $8.00	1,000
	d. Heater oil storage	2,000
	e. Heater storage shed, lighters, etc.	1,500
	f. Soil moisture sensing instruments	100
3.	Total requested first year	$12,645
II.	*Second-Year Costs*	
1.	Orchard planting and first year care—5 acres @ $669	$3,345
2.	Equipment required second increment	
	a. Orchard heaters—125 @ $8.00	1,000
	b. Permanent sprinkler system—5 acres @ $350	1,750
	c. Soil moisture sensing instruments	100
3.	Total requested second year	$6,195
III.	*Third-Year Costs*	
1.	Orchard planting and first year care—5 acres @ $669	$3,345
2.	Equipment required third increment	
	*a. Gasoline-powered wind machine	1,000
	b. Hose dragline sprinkler system	500
	c. Soil moisture sensing instruments	100
	d. Orchard heaters—125 @ $8.00	1,000
	e. Heater filling tank-trailer mounted	1,500
3.	Total requested third year	$7,445
IV.	*Fourth-Year Costs*	
1.	Orchard planting and first year care—5 acres @ $669	3,345
2.	Equipment for fourth increment	
	a. Orchard heaters—125 @ $8.00	1,000
	b. Soil moisture sensing instruments	100
3.	Total requested fourth year	$4,445
V.	*Fifth-Year Costs*	
1.	Orchard planting and first year care—5 acres @ $669	$3,345
2.	Equipment for fifth increment	
	a. Soil moisture sensing instruments	$100
	b. Fencing 25-acre orchard with access gates each 5 acres	$7,500
3.	Total requested fifth year	$10,945

* This item is the cost of moving a dual engine Tropic Breeze wind machine from the Spadra Farm to the new orchard location. This machine is state owned and was located at Spadra for use there until its use was required on state-owned orchards at Kellogg.

VI. *Summary Costs*

First-year development	$12,645
Second-year development	6,195
Third-year development	7,445
Fourth-year development	4,445
Fifth-year development	10,945
TOTAL COSTS	$41,675

Based on the figures presented in the development cost sheet, which shows the dollar value of the instruction program contributions to the orchard development, the total cost of the requested project would be as follows:

Total estimated costs for developing 25 acres of orchards over a five-year period	$41,675
Estimated instruction contribution @ $223/acre over 5-year development period	5,575
ESTIMATED NET COST	$36,100

It is desirable that the total cost of the project be requested and not reduced by instruction contribution. It is difficult to anticipate how much can be accomplished by instruction from year to year. The value of instruction can be accounted for in each year's increment and the savings resulting from this be rebated to the General Fund. In this way the project will not be restricted in its progress due to lack of funds to carry out this development.

The committee approved $12,645 as budgeted for the first year's increment costs of the fruit orchards development.

In the consideration of this item the problem of future land needs of the campus was briefly reviewed by the committee. It was pointed out that the current enrollment at the Pomona campus is about 5,500 and the Master Plan calls for growth to 20,000 full-time students. The availability of land for the development and growth of a strong agricultural program is geared to an assessment of future land needs.

College officials joined with Mr. Les Waight in asking the factfinding committee to review future land needs to meet the growth anticipated in the master plan.

2. Fence at Pomona $11,200

This project will provide fencing to enclose agriculture land recently acquired in the freeway land exchange. The land is bounded on two sides by Valley Boulevard and Temple Avenue. The fence is necessary to prevent vandalism from outside visitors and to keep out children from the adjoining residential development. The fence will also act as a barrier during periods when the animal science department is running livestock. It consists of furnishing and installing 5,300 lineal feet of 6-foot chain-link fencing with 3-strand barbed wire top and install 6 each 6′ x double-swing 16′ gates.

Cost Estimate:

5,300 lineal feet 6-ft. chain-link fencing with 3-strand barbed wire top @ $2 per lin. ft.	$10,600
6 ea. 6' double-swing 16' gate @ $100	600
TOTAL ESTIMATED COST (Contract)	$11,200

The committee recommends approval of this item in the amount of $11,200 to provide fencing to enclose agricultural land acquired in the freeway land exchange.

California State Polytechnic College, at San Luis Obispo

1. Ornamental Horticulture Addition $225,000

The purpose of this project is to provide additional instruction laboratory and service capacity for the ornamental horticulture program.

The ornamental horticulture program at the San Luis Obispo campus is one of the most rapidly expanding programs within the agriculture division. In quite recent years, the need for qualified personnel trained in the many phases of nursery operation and nursery practices has increased significantly. A conservative estimate of the growth of this department indicates an enrollment of approximately 225 students by 1972. It is to provide this additional capacity that the expansion of these facilities is requested.

The original ornamental horticulture unit was on the site that is now occupied by the Mathematics and Home Economics Building. This unit was relocated to a site adjacent to the Grand Avenue entrance road of the campus in 1956. At that time it was thought that this particular location would be a permanent site for this facility. Subsequent to this, however, the expansion of the campus has again forced the relocation of this unit.

This project includes grading, paving, fencing; constructing metal buildings, glasshouses, and lath house; remodeling some metal building interiors and one glasshouse, extending mechanical and electrical services. It involves the addition of six standard 30 x 60 glasshouses, a 40 x 70 general use lath house, additional general storage, and display areas, and adequate restroom facilities. The relocation plans for the unit have been developed to permit the logical expansion on the new site. Equipment is included.

Cost Estimate $225,000

The committee recommends approval of this item as budgeted.

STATE DEPARTMENT OF CORRECTIONS

Correctional Institutions:

Folsom State Prison

1. Improve and Expand Folsom Dairy $38,500

This project is to modernize and increase the capacity of the Folsom dairy to enable the transfer of the San Quentin dairy herd this fall.

It will be less costly and provide improved training facilities by making this move. This project, when completed, will adequately serve the dairy needs of the state institutions at Folsom, Vacaville, and San Quentin.

By placing an insulated 1,500-gallon tank, high-temperature, short-time pasteurizer, and a sweet-water cooling system in the present building, the capacity will be adequate for the three institutions' needs and offer even greater expansion possibilities if needed.

The young and dry stock are being transferred now and the milking herd is scheduled for November 1 if facilities are ready.

Cost Estimate:

The following items and estimated costs are listed as those things needed to accomplish the above program:

Fencing materials	$500
Additional manger space	500
Bulk milk storage tank, 1,500 gal.	6,000
Ice bank and 300 GPH high-temperature, short-time pasteurizer, installed	22,000
2 each hay sheds with shelters	8,000
150 sq. ft. of office space	1,500
TOTAL	$38,500

At San Quentin housing developments moving in around the institution have made the maintenance of the dairy untenable with the problem of flies, dairy effluent and other disagreeable conditions.

Also, the department informed the committee that at the present time both the Folsom and San Quentin dairies have been marginal operations using obsolete equipment in many cases. This project would consolidate both herds at Folsom, increasing its capacity, and at the same time modernize the facilities so that the training received by the inmates would be more meaningful.

The committee recommends approval of this project as budgeted.

Committee Action November 29, 1966

1. At a meeting held on November 29, 1966, the committee recommended that an amount not to exceed $50,000 be budgeted in fiscal year 1967–68 to upgrade slaughterhouse structures and equipment to meet minimum sanitation requirements for state meat inspection at state colleges and state hospitals conducting slaughterhouse operations. (See Exhibit 3, letter to Hale Champion, director, State Department of Finance, from Paul K. Huff, committee consultant, dated December 14, 1966.)

2. The committee also took a position in support of the annual expenditure of approximately $2,235 by the State Department of Agriculture to furnish meat inspection to those state institutions conducting slaughtering operations. (See Exhibit 4, letter to Mr. Charles Paul, director, State Department of Agriculture, from Paul K. Huff, committee consultant, dated December 8, 1966.)

3. At the same time the committee also recommended that the problem of the inadequacy of complete environmental sanitation inspection at state institutions be called to the attention of the Senate Rules Committee for referral to the appropriate factfinding committee for further consideration. (See Exhibit 5, letter to Hugh Burns, chairman, Senate Rules Committee, from Paul K. Huff, committee consultant, dated December 8, 1966.)

MEMBERS

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EXHIBIT No. 4

California Legislature

Senate Fact Finding Committee on Agriculture

VERNON L. STURGEON
Chairman

PAUL K. HUFF
Executive Secretary

Address all communications to
Room 3086
State Capitol
Sacramento 95814
Tel.: 445-2206

November 23, 1966

HONORABLE HALE CHAMPION, *Director*
State Department of Finance
State Capitol
Sacramento, California

Dear Mr. Champion:

Pursuant to instructions from Senator Vernon L. Sturgeon, Chairman of the Senate Fact Finding Committee on Agriculture, this is to inform you that the committee met at the California State Prison, Folsom, on September 12, 1966, to review those items appearing in the 1966–67 State Budget for capital outlay expenditures for structures and facilities at state institutions conducting farm operations.

In attendance at the meeting on September 12th were the following members of the committee:

Senator Vernon L. Sturgeon
Senator Harold T. Sedgwick
Senator Hugh P. Donnelly
Senator Robert D. Williams
Senator Walter Stiern
Senator Jack Schrade
Senator William Symons, Jr.

Also in attendance were officials of the Departments of Finance, Corrections, Mental Hygiene, Agriculture, and Public Health, together with representatives of Chico State College, California State Polytechnic College at San Luis Obispo and Pomona, the office of Architecture and Construction, and the office of the Legislative Analyst.

The committee, functioning pursuant to the provisions of Senate Standing Rule No. 12.5, approved capital outlay items for structures and facilities for activites appearing in the 1966–67 State Budget, as per the attached report, for the following institutions:

Trustees of the California State Colleges:

Fresno State College
California State Polytechnic College at San Luis Obispo
California State Polytechnic College at Pomona

Department of Corrections:

California State Prison, Folsom

It should also be mentioned that at a meeting held at the California Training Facility at Soledad, on December 8, 1965, this committee expressed its concern regarding the fact that at the present time state institutions slaughtering livestock do not have meat inspection by any recognized government inspection agency.

The committee also expressed concern regarding certain alleged practices involved in the handling of milk and other food products at state institutions, which practices do not conform to existing public health requirements and standards.

The matter was discussed in detail by the committee at the meeting held on September 12, 1966, particularly as it related to slaughtering facilities at the Department of Corrections institutions; namely, California Institute for Men, at Chino; California Training Facility at Soledad; and Deuel Vocational Institution, at Tracy.

Following this discussion the committee unanimously recommended that the Department of Corrections include a request in the Governor's Budget for the fiscal year 1967–68 an amount adequate to upgrade plant equipment and structures to meet minimum sanitation requirements for state meat inspection at these three correctional facilities surveyed by the Department of Agriculture.

At this same meeting the committee also requested the Department of Agriculture to conduct surveys of slaughterhouses and meat processing establishments at the following state institutions:

Department of Mental Hygiene:

Agnews State Hospital
Mendocino State Hospital
Patton State Hospital
Sonoma State Hospital

State Colleges:

Fresno State College
California State Polytechnic College, at Pomona
California State Polytechnic College, at San Luis Obispo

The committee also requested an estimate of the annual cost to furnish meat inspection to these same institutions.

It should be noted that the committee did not specifically require the Department of Agriculture to survey the facilities at Chico State College. Slaughtering at Chico State College is done on a very limited basis. In response to the committee's questions regarding these facilities, Chico State College officials indicated that in order to meet minimum sanitation requirements for state meat inspection, the college is anticipating the construction of a meat laboratory building scheduled in phase III of their building program.

Arrangements have been made for another meeting the latter part of November to complete the commitee's consideration of all aspects of the problem.

While no specific action was taken, the committee did forcefully express its concern regarding the fact that while the State Department of Public Health is responsible for the annual inspection of each of the

some 50 state institutions, only a very few of them are provided a complete environmental sanitation inspection each year because of a shortage of state personnel.

Respectfully submitted,

PAUL K. HUFF
Executive Secretary

EXHIBIT No. 5

December 8, 1966

SENATOR HUGH BURNS, *Chairman*
Senate Rules Committee
State Capitol
Sacramento, California

Dear Senator Burns:

As you know, this committee is by the terms of Standing Rule 12.5 charged with the responsibility of annually reviewing capital outlay expenditures for structures and facilities at state institutions conducting farm operations.

During the course of our review this year it came to the committee's attention that while the State Department of Public Health is responsible for the annual inspection of each of the some 50 state institutions, only a very few of them are provided a complete environmental sanitation inspection because of the shortage of state personnel.

The committee is on record expressing its concern regarding this matter. However, it feels that this problem is somewhat beyond the purview of its responsibilities, particularly as it relates to those state institutions which do not conduct farm operations.

For this reason the committee has instructed me to write you asking that this problem be rereferred by the Senate Rules Committee to the appropriate factfinding committee for consideration.

Very truly yours,

PAUL K. HUFF
Executive Secretary

EXHIBIT No. 6

December 8, 1966

CHARLES PAUL, *Director*
State Department of Agriculture
1220 N Street
Sacramento, California

Dear Mr. Paul:

Under date of November 10, 1966, as requested your department provided this committee with the figure of approximately $2,235.28 as the additional cost to your department for travel expenses to furnish meat inspection to those state institutions conducting slaughtering operations.

This is to inform you that at the meeting held on November 29 of this year, this committee took a position in support of the expenditure of this amount and for the purposes indicated.

In taking this action the committee recognizes that this figure is based upon the situation as it presently exists and as detailed in the cost estimates provided the committee.

Very truly yours,

PAUL K. HUFF
Executive Secretary

MEMBERS
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Vice Chairman
James A. Cabey
Hugh P. Dannelly
Virgil O'Sullivan
Aaron W. Quick
Joseph A. Rattigan
Jack Schrade
Harald T. Sedgwick
Walter W. Stiern
William Symons, Jr.
Howard Way
Robert D. Williams

EXHIBIT No. 7

California Legislature

Senate Fact Finding Committee

on

Agriculture

VERNON L. STURGEON
Chairman

PAUL K. HUFF
Executive Secretary
Address all communicati
State Capitol
Sacramento 95814
Tel.: 445-2206

December 14, 1966

HALE CHAMPION, *Director*
Department of Finance
State Capitol
Sacramento, California

Dear Mr. Champion:

At a meeting held on November 29, 1966, this committee took action recommending that an amount not to exceed $50,000.00 be budgeted in fiscal year 1967–68, to upgrade plant equipment and structures to meet minimum sanitation requirements for state meat inspection at the following institutions:

Department of Mental Hygiene

Agnews State Hospital
Patton State Hospital
Sonoma State Hospital

California State Colleges

Fresno State College
California State Polytechnic College, Kellogg-Voorhis
California State Polytechnic College, San Luis Obispo

This amount of $50,000 was based in part upon the following preliminary estimates furnished to the committee:

Department of Mental Hygiene	$16,000.00
Fresno State College	10,000.00
California State Polytechnic College, Kellogg-Voorhis	1,400.00
California State Polytechnic College, San Luis Obispo	10,000.00

For your information, the committee had previously recommended that the Department of Corrections also include a request in the Governor's Budget for fiscal year 1967–68 in an amount adequate to upgrade plant equipment and structures to meet minimum sanitation

requirements for state meat inspection at the following correctional facilities:

California Institution for Men, Chino
Correctional Training Facility, Soledad
Deuel Vocational Institution, Tracy

Respectfully submitted,

PAUL K. HUFF
Executive Secretary

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Report of the

SENATE FACT FINDING COMMITTEE ON EDUCATION

to the

LEGISLATURE

1967 GENERAL SESSION

Members of the Committee

RICHARD J. DOLWIG, *Chairman*

ALBERT S. RODDA, *Vice Chairman*
HUGH P. DONNELLY *
FRED S. FARR *
DONALD L. GRUNSKY
JOSEPH A. RATTIGAN †
HAROLD T. SEDGWICK *
WALTER W. STIERN
HOWARD WAY

Committee Staff

DR. JAMES E. JENSEN, *Administrative Analyst*
MARY WULZEN, *Secretary*

*Term expired.
†Resigned

Published by the
SENATE
OF THE STATE OF CALIFORNIA
1967

HON. ROBERT H. FINCH
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate

LETTER OF TRANSMITTAL

The Honorable Robert H. Finch
President of the Senate

Dear Mr. President:

The Senate Fact Finding Committee on Education created pursuant to Section 12.5 of the Standing Rules of the Senate herewith submits its 1967 report.

The committee received testimony during its deliberations at six public hearings. Transcripts of all hearings are on file at those agencies which serve as depositories for the State of California.

The committee wishes to gratefully acknowledge the cooperation and assistance of the officials of many state boards, departments, and agencies. We also wish to acknowledge the cooperation of the officials of numerous organizations and the many individuals who presented testimony which aided the committee in its studies of educational problems.

Respectfully submitted,

Richard J. Dolwig, *Chairman*
Hugh P. Donnelly
Donald L. Grunsky
Joseph A. Rattigan
Albert S. Rodda, *Vice Chairman*
Harold T. Sedgwick
Walter W. Stiern
Howard Way

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CHAPTER I

THE INTERRELATIONSHIP BETWEEN STATE AND FEDERAL EDUCATION LAWS

BACKGROUND

Historically, we in the United States have had federal aid to education for many years. Nearly 200 years ago the Northwest Ordinance set aside land in each township for education. Since then the federal government has established numerous other programs which have aided education. Among the most famous of these were: The Smith-Hughes Act; the "G. I. Bill of Rights"; and Public Law 874 which provided funds for school districts which educated federally connected public school children.

Two years ago, the 89th Session of the United States Congress passed its most comprehensive and far-reaching education legislation. Some observers named this 89th Session the Education Congress. The Higher Education Act of 1965 and the Elementary and Secondary Education Act of 1965 provided for the inauguration of new programs and vast amounts of federal funds.

In California, as in the other 49 states, we were not prepared for the massive new federal school aid. State officials, county schools offices, and school districts hurriedly tried to formulate plans for the inauguration of new programs.

Scope of Federal Programs

The federal government's role in education can be better understood when Table I is examined. In the fiscal year 1966, over 60 laws and more than $3 billion in federal money were administered by the U.S. Office of Education. Nearly half of these programs required matching funds.

The committee was aware that such educationally oriented programs as those authorized by the Economic Opportunity Act, and others, are not administered by the U.S. Office of Education. Over 40 different federal agencies are involved in administering educational laws.

COMMITTEE HEARINGS

Existing educational legislation in California did not coincide with the intent or the practice of some of the new federal education laws. Members of the Senate Fact Finding Committee on Education became concerned about the interrelationship between state and federal education laws and subsequently convened for three days to hear testimony on this particular subject. Hearings were held in San Francisco on November 30 and December 1, 1965, where witnesses were scheduled who represented small school districts, large school districts, and county and state offices. In addition, representatives of state agencies, professional organizations, and state departments were asked to testify.

On January 27, 1966, the committee reconvened in Los Angeles. At this hearing, the committee made a determined effort to secure witnesses who were classroom teachers. It was vital to know what impact

TABLE 1

FEDERAL MONEY FOR EDUCATION: PROGRAMS ADMINISTERED BY THE U.S. OFFICE OF EDUCATION, FISCAL YEAR 1966

PROGRAM	PURPOSE	FEDERAL SHARE[1]	WHO MAY APPLY
Smith-Hughes Act	Provide for vocational education and teacher training in agriculture, trade and industry, and home economics	50 percent	Public schools through State boards of vocational education
George-Barden Act Title I	Extend Smith-Hughes Act to include distributive occupations, fishery trades, and vocational guidance	50 percent	Public schools through State boards of vocational education
Title II	Develop training programs for health occupations	50 percent	Public schools through State boards of vocational education
Title III	Train highly skilled technicians	50 percent	Public schools through State boards of vocational education
Vocational Education Act of 1963	Maintain, extend, and improve vocational education programs; develop new programs	50 percent	Public schools through State boards of vocational education; contracts with private, commercial institutions
Research and training	Develop research and training programs, and experimental and pilot programs for special needs	No specific minimum Matching required	State education agencies, colleges and universities, local education agencies
Work-study program	Provide part-time employment for young people to help them begin or continue vocational training	100 percent first 2 years 75 percent next 2 years	State education agencies
Residential schools	Prepare young people for employment	100 percent	Public schools through State boards of vocational education
Appalachian regional development program	Construct vocational education facilities in the Appalachian region	50 percent	State education agencies
Manpower Development and Training Act	Train skilled workers in all sections of the Nation	100 percent	Persons referred by State employment services
Higher Education Facilities Act of 1963 Title I: Community colleges, tech. institutes	Construct or improve academic facilities at public community colleges and technical institutes	Up to 40 percent	Public community colleges and technical institutes
Other undergraduate facilities	Construct or improve undergraduate academic facilities	Up to 33⅓ percent	Public and private, nonprofit colleges and universities, except community colleges and technical institutes
Title II. Graduate facilities	Construct or improve graduate academic facilities	Up to 33⅓ percent	Public, private nonprofit, and cooperative graduate centers of high learning
Title III. Construction loans	Construct or improve undergraduate and graduate academic facilities	Up to 75 percent	Public and private, nonprofit colleges and universities, cooperative graduate centers, boards of higher education
State administration	Help States administer program under Title I	100 percent	State commissions set up to administer the program
Endowment of colleges of agriculture and mechanic arts	Support instruction in agriculture and mechanic arts in land-grant colleges	100 percent	The 68 land-grant colleges
Library Services and Construction Act Title I. Extension of services	Extend and improve public library services	Matching grants based on State per capita income	State library administrative agencies
Title II. Construction	Aid construction of public libraries	Matching grants based on State per capita income	State library administrative agencies

TABLE 1—Continued

FEDERAL MONEY FOR EDUCATION: PROGRAMS ADMINISTERED BY THE U.S. OFFICE OF EDUCATION, FISCAL YEAR 1966

PROGRAM	PURPOSE	FEDERAL SHARE[1]	WHO MAY APPLY
Aid to federally impacted areas P.L. 874. Maintenance and operation School districts	Aid school districts on which Federal activities have placed a financial burden	100 percent	Local school districts
Federal agencies	Aid Federal agencies such as Department of Defense in providing schools for children who live on Federal property	100 percent	Federal agencies operating schools
P.L. 815. Construction: School districts	Aid school districts in providing minimum school facilities in federally impacted areas	100 percent	Local school districts
Federal agencies	Aid other Federal agencies in building schools for children living on Federal property	100 percent	Other Federal agencies
Technical services	Provide funds for technical services in the construction of schools in federally impacted areas	100 percent	Not applicable
National Defense Education Act of 1958 Title II. Student loans Contribution to loan fund	Provide for low-interest loans to college students	90 percent	Accredited nonprofit institutions including any accredited business school or technical institute
Loans to institutions	Provide for loans to colleges and universities that cannot meet matching obligation	100 percent	Colleges and universities and other institutions taking part in student loan program
Cancellation of loans	Reimburse institutions for their portion of principal and interest canceled for teachers	100 percent	Participating institutions
Title III. Strengthening of instruction Public schools	Strengthen instruction in critical subjects in elementary and secondary schools	50 percent	States get allotments; school districts apply to State
Loans to private schools	Improve instruction in critical subjects in private schools	100 percent	Nonprofit private elementary and secondary schools
Supervision and instruction	Strengthen supervision and administration in State education agencies	50 percent	States get allotments
Title IV. Graduate fellowships	Prepare more teachers	100 percent	Prospective college teachers working for Ph.D. degrees
Title V-A. Guidance, counseling, and testing: State programs	Provide for guidance, counseling, and testing in public elementary and secondary schools; testing in private schools	50 percent	States get allotments
Title V-B. Counseling institutes	Improve qualifications of guidance workers and counselors in schools and colleges	100 percent	Accredited public and private nonprofit colleges and universities
Title VI. Language and area centers	Increase amount of study of uncommon languages and area subjects and improve quality of instruction	50 percent	Accredited public and private nonprofit colleges and universities
Foreign language fellowships	Train college teachers of modern foreign languages and area studies	100 percent	Persons trained in modern foreign languages with the exception of French, German, Italian, and European Spanish
Research and studies	Support research on improved instruction in modern foreign languages and teaching methods	100 percent	Colleges, universities, professional associations, public school systems, and individual persons

TABLE 1—Continued

FEDERAL MONEY FOR EDUCATION: PROGRAMS ADMINISTERED BY THE U.S. OFFICE OF EDUCATION, FISCAL YEAR 1966

PROGRAM	PURPOSE	FEDERAL SHARE[1]	WHO MAY APPLY
Title VII. Media Research	Support research on educational uses of television, radio, motion pictures and other media	Some matching required	Grants: Public or nonprofit institutions: individual persona Contracts: Public agencies; individual persons
Title X. State statistical services	Improve statistical services of State education agencies	50 percent	State education agencies
Title XI. Institutes for advanced study	Improve qualifications of the elementary and secondary school teachers	100 percent	Colleges and universities
Education of the handicapped (P.L. 88-164, Title III) Teacher training	Prepare teachers and others who work with handicapped	100 percent	State education agencies, colleges and universitiea
Research and demonstration	Promote research and demonstration on the education of the handicapped	100 percent	State education agencies, local school districts, nonprofit private organizations, public groups
Captioned Films for the Deaf	Provide cultural and educational services to the deaf through films	100 percent	Usually by invitation
Cooperative Research Program Arts and humanities	Support research on education in the arts and humanities at all levels	No specific minimum matching required	Colleges, universities, State education agencies. Private or public groups, or individuals
Curriculum	Support research on the improvement of curriculum	No specific minimum matching required	Colleges, universities, State education agencies. Private or public groups, or individuals
Research and development centers	Support research on the major problems of education	No specific minimum matching required	Colleges, universities, other public and private agencies, institutions, and organizations
Research on comparative education (special foreign currency program, P.L. 480) Research	Use counterpart funds for educational research of value to the United States and other nations	No specific minimum matching required, but there must be some	Ministries of education and colleges and universities abroad
Travel	Finance travel necessary to complete comparative education studies conducted abroad	100 percent	American or foreign researchers; institutions abroad
NDEA-related Fulbright-Hays fellowships	Improve competence of prospective teachers of modern foreign languages and area studies	100 percent	Graduate students through the National Defense foreign language fellowships committee at home institutions
Foreign language training-area studies Faculty members	Improve competence of faculty members of NDEA language and area studies centers	100 percent	NDEA center faculty members through center directors
Elementary and secondary school teachers	Improve competence of elementary and secondary school teachers of foreign languages and area studies	100 percent	Teachers and supervisors of modern foreign languages and area studies with five years' experience
Seminars	Improve competence of elementary and secondary school teachers of foreign languages and area studies	100 percent	Teachers of foreign languages and area studies in secondary schools or colleges with two years' experience
Curriculum specialists	Provide foreign curriculum specialists to U.S. schools to help strengthen language-area studies programs	100 percent	Local school agencies and State education agencies
Economic Opportunity Act of 1964 College work-study program	Provide part-time employment for needy college students	90 percent	Colleges and universities

TABLE 1—Continued

FEDERAL MONEY FOR EDUCATION: PROGRAMS ADMINISTERED BY THE U.S. OFFICE OF EDUCATION, FISCAL YEAR 1966

PROGRAM	PURPOSE	FEDERAL SHARE[1]	WHO MAY APPLY
Adult basic education	Provide literacy programs for adults to help them obtain employment	100 percent	State education agencies
Civil Rights Act of 1964 Institutes	Provide training on problems incident to desegregation	100 percent	Colleges and universities
Grants to school boards	Aid school boards in hiring advisors and training employees on problems incident to school desegregation	100 percent	School boards and other public agencies responsible for operating public schools
Educational television (P.L. 87-447)	Aid in the acquisition and installation of transmitting and other type equipment necessary for broadcasting	50-75 percent	Nonprofit organizations, public colleges, State educational television agencies, and education agencies
Science clubs (P.L. 85-875)	Encourage students interested in science to pursue their interest outside of class in science clubs	100 percent	State education agencies; colleges and universities
Cuban refugee program Aid to Dade County, Fla.	Assist schools in providing education for great numbers of refugee children	About 50 percent	Dade County, Fla.
Student loans	Aid refugee college students to continue their education	100 percent	Cubans who became refugees after January 1, 1959
Professional training	Provide refresher training for physicians and teachers	90 percent	Refugee physicians and teachers
Civil defense adult education	Provide information on civil defense procedures to the public	100 percent	State agencies (by invitation)
International exchange service	Train foreign participants on programs sponsored by the Agency for International Development	100 percent	Teachers and school administrators from other countries
Elementary and Secondary Education Act of 1965 Title I. Programs for the disadvantaged	Support educational programs in areas having high concentrations of low-income families	100 percent	State education agencies
Title II. Library resources	Support provision of school library resources, textbooks, and other instructional materials	100 percent	Local education agencies
Title III. Supplementary centers	Support supplementary educational centers and services	100 percent	Local education agencies
Title IV. Research	Construct national and regional research facilities	Some matching required	Public and private research agencies
Title V. Strengthening State education agencies	Improve leadership resources of State education agencies	100 percent	State education agencies

[1] Proportion of the costs the Federal Government will pay.
Source: American Education, July–August, 1965.

and effect the federal programs had upon the school children of California. Some witnesses who testified at the previous hearing were invited to reappear so additional, in-depth information might be presented.

Nearly all of the concrete suggestions and criticisms presented by the witnesses were more applicable to the U.S. Congress than to the State Legislature. Corrective and remedial action needs to be investigated at the federal level. Therefore, most of the conclusions and recommendations are directed to the U.S. Congress, not to the California State Legislature.

CONCLUSIONS

1. There is tremendous overlapping among the various preschool programs.

2. Other federal programs which have unnecessary overlapping are the Vocational Education Act, the Economic Opportunity Act, and the Elementary and Secondary Education Act.

Examples of Overlapping

A representative of the Los Angeles City School System listed for the committee the five different sources from which their preschool programs were funded. They included:

a. Juvenile Delinquency and Youth Act;
b. Economic Opportunity Act;
c. Elementary and Secondary Education Act;
d. Federal Social Security Act, which is woven in with the Unruh Preschool Act; and
e. Local Child Care Centers, which are funded from school taxes locally.

It seemed almost inconceivable to the committee that this amount of fragmentation would exist.

Typical of the examples presented to the committee is this statement by the Superintendent of Schools at Hayward: "We get different directives almost weekly, relative to interpretations of which programs will fall under which act. As an example, in our district we established a rather comprehensive reading program under the Economic Opportunity Act. It is in operation this year. We have been allocated $407,000 under the Economic Opportunity Act for this year and now we are told that next year the remedial reading program will have to be funded out of the Elementary and Secondary Education Act, rather than the Economic Opportunity Act. This is all well and good, but we can't get a firm commitment on this so we can't go ahead and plan for next year. We don't really know how much of that $407,000 is available for new programs. We can't plan. We can't write projects. We are in limbo and nobody seems to be able to give us an answer to this."

Many school officials readily admit their staffs plan program applications to meet the criteria of the agency which has the simplest application forms or has the most funds to disburse. The main objective for the inauguration of a new program should be to provide the best educational benefit to the children in the classroom.

3. State and school officials have a difficult time ascertaining the amount of money which will be allocated for federal programs. This makes school district and state legislative budget planning extremely difficult.

4. The delay in federal funding can serve as a deterrent to districts applying for federal education programs.

These two conclusions (3 and 4) are both related to the problems of adequate budget planning.

Lack of Information

Several witnesses decried the lack of information which they are able to garner about federal education programs. The Director of the Coordinating Council for Higher Education underscored this point when he stated: "Currently there is no single document available which sets forth the number and type of federal programs having a relationship to California higher education."

When queried about a state plan which might be available to the California State Legislature, he continued: "We are faced here under Title I and under Title VI (Higher Education Act), which is where the council has responsibilities, with the necessity of drawing up a state plan. We cannot draw a state plan until we have the federal rules and regulations. These have not been drawn up. Even the tentative rules and regulations are not yet in the Federal Register. We can't draw a state plan until we have the regulations before us to do this."

This lack of information was of concern to the members of the committee, as well as to educators. No witness was able to ascertain what state moneys might be needed for the budget if the Legislature in 1966 desired to participate in those programs which required matching funds.

Funding Federal Programs

The delay in funding federal education programs causes problems when schools attempt to: (1) employ personnel; (2) guarantee local and state officials they will be properly reimbursed for expended funds; and (3) plan their budgets for the forthcoming year.

School district authorization to expend federal funds is often not received until the school year has begun. Most teachers are hired in the spring of each year; therefore, staffing problems at this late date are almost insurmountable.

The problem of reimbursement of funds was graphically presented when a witness who presented testimony about the time lag in federal funding and the doubt of reimbursement, stated: "I have to go to him (the superintendent) and say, now your neck is out so far. If anything goes wrong with this commitment, local funds will have to meet the deficit."

A number of school districts in California today will not apply for certain federal programs because their local funds are so limited that they cannot take the chance of not being reimbursed.

Adequate budget planning by local school officials becomes almost impossible since funding of federal education programs is often completed late in the spring or summer. In addition, the one year funding of many federal programs makes long-range planning unfeasible.

Curtailment of federal funds and the changing of matching requirements make budget planning difficult. For example, last spring the Director of Compensatory Education in California announced to all public schools that the amount of all money available for programs administered by his office would be only approximately 85 percent of the amount originally estimated. Several school districts also experienced budgetary problems when the Vocational Education Act's matching funds for salaries requirement was changed from a 50-50 percent matching basis to a 75-25 percent matching basis.

5. The lack of space to house students often restricts the districts when they attempt to inaugurate new programs.

California has enrolled in its school system approximately one million more students than any other state in the Union. The problem of providing housing for this burgeoning school population is almost unbelievable. For example, the largest school district in the state, Los Angeles, needs to provide facilities for 25,000 to 30,000 additional students each year.

Other school districts in suburban areas may triple or quadruple their student population in a year's time. Urban area schools often have neither the land nor the money to build additional facilities. Lack of building funds, or the authority to rent additional space, in federally aided education programs can severely limit the districts' ability to participate in these programs.

6. There is a need in California schools for "pure money" rather than "categorical aid."

Categorical aid—that offered in numerous federal education programs—does not assist the schools as they attempt to meet their rising costs, nor does it assist them as they attempt to improve their comprehensive educational programs offered to all children.

Two unanswered questions concerning categorical aid which the committee raised during its deliberations were: (1) What are the "hidden" additional costs to the schools when the personnel time necessary for planning and admininstering these programs is computed? (Note—The committee has on file only one superintendent's analysis of such facts and would encourage other educational institutions to perform a similar breakdown of costs.) And (2) What is the effect upon the schools' total educational programs when a high percentage of personnel resources is used for categorically aided special programs?

7. Too often special programs remove the best teachers from the classrooms where they are desperately needed.

Several witnesses indicated that some of their best teachers were leaving a classroom to become directors, supervisors, and administrators of special federal projects at a time when California is making a determined effort to keep its best personnel in the classroom. The committee questions the advisability of transferring personnel to these nonteaching positions and wonders if we are really achieving, in the long run, the desired effect of a good educational program.

RECOMMENDATIONS

I. A copy of the Senate Fact Finding Committee on Education 1967 Report to the Legislature should be sent to both of California's U.S. Senators, its 38 Congressmen, and the Department of Health, Education, and Welfare.

II. During the 1967 interim period, the Senate Fact Finding Committee on Education should study the myriad of special programs, both federal and state. One of the main purposes of such a study would be to ascertain how these programs are being coordinated.

III. The Legislature should memorialize the United States Congress to: (1) provide for the financing of federal education programs for more than one year; (2) provide federal housing funds for all federal education programs; (3) require local agencies and school districts to channel applications for federal education funds through the State Department of Education; and (4) investigate the overfragmentation of federal education programs which deemphasizes the educational programs in our schools for the average student.

Addendum

The question was raised during the hearing in San Francisco as to whether the present law affords county school superintendents authority to effectively coordinate the various programs which may be established by school districts under such federal legislation, as the Elementary and Secondary Education Act of 1965, and the National Defense Education Act of 1958. The Legislative Counsel's opinion on this question is given in Appendix A. Appendix B is the opinion rendered by the Alameda County Superintendent's Office, which differs somewhat from the Legislative Counsel's opinion. Finally, in Appendix C, the Legislative Counsel's review of both of these opinions is presented.

San Francisco, November 30 and December 1, 1965

WITNESSES IN ORDER OF APPEARANCE

Dr. Willard Spalding, *Director*, Coordinating Council for Higher Education
Dr. Everett T. Calvert, *Chief Deputy Superintendent* of Public Instruction
Dr. DeForest Hamilton, County Superintendents Association
Dr. William Cunningham, *Superintendent*, Hayward Unified School District
Dr. Frederick Fox, *Assistant Superintendent*, Budget Services Division, Los Angeles City Schools
Mr. Henry Kossow, *Superintendent*, Del Paso Heights School District
Mr. Charles Smithers, California State Chamber of Commerce
Dr. Daniel E. Johnson, *Chairman*, Education Committee, California Council for Retarded Children
Mr. James Stefan, Monterey County Office of Education
Mr. George Johnson, California Association of Adult Education Administrators
Mr. C. Edward Pedersen, California Council for Adult Education
Mr. Jack Singer, *Superintendent*, Eureka City Elementary and City High Schools
Mr. Ronald Little, *Principal*, Natomas Union Elementary School
Mrs. Eleanore Nettle, California School Boards Association
Mr. William Barton, California Teachers Association
Mr. Duane L. Bay, *Federal Program Coordinator*, Santa Clara County Schools
Mrs. Marian Anderson, *President*, Northern California Association for the Education of Young Children
Dr. George Rusteika, *Assistant County Superintendent of Schools*, Alameda County
Dr. March Fong, Alameda County Board of Education
Mr. William McGowan, *Executive Secretary*, California Association of Secondary School Administrators
Mrs. Elsie W. Gee, *President*, East Bay Council of Parent Participating Preschools
Mrs. David Joseph, Advisory Compensatory Education Commission

WRITTEN TESTIMONY RECEIVED

MR. LES COHEN, *Director of Governmental Affairs*, The California State Colleges
MRS. DAVID JOSEPH, Advisory Compensatory Education Commission

Los Angeles, January 27, 1966

WITNESSES IN ORDER OF APPEARANCE

MR. THOMAS W. BRADEN, *President*, State Board of Education
MR. MONROE SWEETLAND, *Legislative Consultant*, National Education Association
MR. KEITH SEXTON, *Associate Director*, Coordinating Council for Higher Education
DR. DENZIL E. WIDEL, *Superintendent*, Fontana Unified School District; Joint Legislative Committee, California Association of School Administrators
MRS. DOROTHY BOBERG, Northridge
MR. EDMUND L. LEWIS, *Executive Assistant*, California School Boards Association
MR. KENNETH WILKINS, *Sixth Grade Teacher*, Murchison Street School, Los Angeles City Schools
MR. JERRY W. BARNETT, *School Community Coordinator*, Charles Drew Jr. High School, Los Angeles City Schools
MR. JUDSON BRADSHAW, *Legislative Committee*, California Council for Adult Education
MRS. MARJORIE MORRIS, *Legislative Representative*, Southern California Association for Nursery Education
MRS. EVELYN ZIVETZ, *Chairman*, Educational Policies Committee of Los Angeles, Local 1021, American Federation of Teachers
MR. LEO GALLOWAY, *Sixth Grade Teacher*, One Hundred Twelfth Street School, Los Angeles City Schools

CHAPTER II

TEACHER TRAINING—SENATE BILL 1212 (RODDA)

The Senate Fact Finding Committee on Education convened on January 28, 1966, in Los Angeles to hear testimony pertaining to Senate Bill 1212 (1965).

As introduced, the bill required an allocation of $10 for each unit of credit earned by education students as a result of practice teaching or supervised field experience provided by the district. This money was to be used exclusively to compensate the training teacher for his service to college education students.

The bill also provided for state reimbursement for actual excess current expenses incurred by school districts when participating in teacher training programs.

CONCLUSIONS AND RECOMMENDATIONS

Members of the Senate Fact Finding Committee on Education did not reach any definite conclusions or make any recommendations regarding the provisions of Senate Bill 1212.

WITNESSES IN ORDER OF APPEARANCE

Mrs. Mildred Naslund, Los Angeles City Schools

Dr. Carl Larson, *Chief*, Bureau of Teacher Education and Certification, State Department of Education

Mr. Les Cohen, *Governmental Affairs Director*, The California State Colleges

Mr. Clint Jordan, Office of Legislative Analyst

Dr. Frederick Quinlan, *Dean*, School of Education, Immaculate Heart College

Mr. William Barton, California Teachers Association

Dr. Claude Fawcett, *Professor of Education*, University of California at Los Angeles

Dr. Irving R. Melbo, *Dean*, School of Education, University of Southern California

WRITTEN TESTIMONY RECEIVED

State Department of Finance

CHAPTER III

CONSERVATION EDUCATION

The Senate Fact Finding Committee on Education and the Senate Fact Finding Committee on Natural Resources held a joint hearing in Sacramento on March 16, 1966, on the subject of conservation education in California's public schools.

CONCLUSIONS AND RECOMMENDATIONS

Members of the Senate Fact Finding Committee of Education did not reach any definite conclusions or make any recommendations regarding conservation education.

WITNESSES IN ORDER OF APPEARANCE

MR. J. EARL SMITH, *Acting Supervisor*, Thrift Conservation and School Savings Section, Los Angeles City Schools

MR. HUGO FISHER, *Administrator*, Resources Agency

MR. ROBERT CALKINS, *Deputy Director*, Department of Conservation

MR. A. ALAN POST, *Legislative Analyst*

MR. EDWARD DOLDER, *Deputy Director*, Department of Parks and Recreation

MR. WILLIAM DILLINGER, *Chief*, Conservation Education, Department of Fish and Game

MR. WILLIAM N. GOODALL, *Western Representative*, National Audubon Society

DR. HENRY M. GUNN, *Acting Chief*, Bureaus of Elementary and Secondary Education, State Department of Education

MR. HERBERT D. GWINN, Bureau of Secondary Education, State Department of Education

MISS JANE WESTENBERGER, Association for Outdoor Education

MR. DENNIS REINHARDT, Committee of Concern

MR. NICHOLAS MARIANA, *Conservation Education Coordinator*, Bureau of Sports Fisheries and Wildlife, U.S. Fish and Wildlife Service

DR. J. GRAHAM SULLIVAN, *Chief*, Division of Instruction, State Department of Education

MISS LELIA CROUCH, California Conservation Council and U.S. Forest Service

MR. NORMAN H. TRAVERSO, *Executive Vice President*, Redwood Region Conservation Council

MR. JOHN H. CARTER, California Roadside Council

MR. ALLISON J. MCNAY, Western Oil and Gas Association

MR. HANS EWOLDSEN, *Chairman*, Education Committee, California State Association of Soil Conservation Districts

MR. RAY HUNTER, *Director of Natural Resources*, California Farm Bureau

MR. EUGENE L. THOMAS, *President*, California Chapter of the Soil Conservation Society of America

MR. LOREN D. GOOD, *District Manager*, American Forest Products

MR. CHRISTIAN NELSON, *Chief*, Interpretive Department, East Bay Regional Park District

MR. LEONARD HUMMEL, *Chairman*, Committee of Conservation, Information and Education, California Wildlife Federation

PROFESSOR WILLIAM HAMMERMAN, *President*, Association for Outdoor Education and *Chairman* of the Northern California Chapter of The Nature Conservancy

MRS. MARILYN HEILMAN

MR. WARNER L. MARSH, *Planning Consultant and Landscape Architect*

WRITTEN TESTIMONY RECEIVED

Audubon Nature Training, Berkeley
The Conservation Foundation
Committee of Concern
Santa Clara County Office of Education
Northern California Association for the Education of Young People
Fire Department, County of Los Angeles
North Sacramento Women's Club
Department of Biological Sciences, San Jose State College
Margaret W. Owings, *California State Park Commissioner*
Ansel Adams, Carmel
Izaak Walton League of America
Warner L. Marsh
Professor Paul B. Sears (*Emeritus*), *Director*, Yale Conservation Program
Sigurd F. Olson, *Consultant* to Secretary of Interior; and *Director*, National Park Service
Professor Raymond B. Cowles (*Emeritus*), Zoology, University of California at Los Angeles
California Forest Protective Association

CHAPTER IV

SCHOOL DISTRICT ORGANIZATION

Senate Resolution 149 (Marler)

STUDIES OF UNIFICATION IN CALIFORNIA

Since 1920, a number of statewide studies concerning unification have been made. In that year, the Jones Committee, appointed by the State Legislature, recommended the county as the desirable school administrative unit. Sears and Cubberly in 1924 reported that the inequality and the burden of school support in California were mainly due to the retention of small districts as taxing units. Further studies made in the 1930's by the U.S. Office of Education, the Carnegie Foundation, and the State Superintendent of Public Instruction recommended a drastic reduction in the number of school districts.

UNIFICATION IN CALIFORNIA

As shown in Table 2, California had no unified school districts until the mid-thirties. In the school year 1936–37, there were 35 operative unified school districts; in the school year 1966–67, there are 228. Within this 30-year span the total number of school districts decreased from 3,047 to 1,189. However, there still existed in 1966, 370 districts with an average daily attendance of less than 200. Table 3 shows the number of unified school districts established each year since 1936–37.

STUDIES OF UNIFICATION NATIONWIDE

In the past 30 years, there has been a multitude of studies on the size required for a satisfactory school district. Much of the material has been of dubious quality, reflecting little more than the biases of the author. Among the criteria for establishing effective school districts most frequently stated are:

1. **Scope of Program.** In his book, *The American High School Today*, James B. Conant suggests a graduating class of at least 100 students is needed to provide a proper program in a comprehensive high school. This would probably indicate a school district of approximately 1,500 students to 2,000 students. Other studies have indicated that an administrative unit of between 1,500 and 3,000 students is essential for a good instructional program.

2. **Range of Educational Services.** Most authorities agree that to have a good range of educational services a larger school district than 2,000 pupils is needed. The size of the recommended administrative unit which would enable a school district to offer the necessary special services varies considerably. However, a review of studies here shows that enrollment of between 10,000 to 15,000 pupils would be the minimal size district.

3. **The Community.** Considerable disagreement exists on the proper size of a school community. Much of this disagreement centers around the definition of the word "community." The deep-rooted

TABLE 2

UNIFIED SCHOOL DISTRICTS ESTABLISHED AND OPERATIVE SINCE 1936

Fiscal year	Number of unified districts	
	Established	Operative
1936–37	35	35
1937–38	1	36
1938–39	0	36
1939–40	2	38
1940–41	2	40
1941–42	0	40
1942–43	1	41
1943–44	1	42
1944–45	2	44
1945–46	2	46
1946–47	1	47
1947–48	0	47
1948–49	8	55
1949–50	7	62
1950–51	5	67
1951–52	2	69
1952–53	8	75
1953–54	8	83
1954–55	5	88
1955–56	4	92
1956–57	4	95
1957–58	2	97
1958–59	7	103
1959–60	4	107
1960–61	12	119
1961–62	16	133
1962–63	10	143
1963–64	12	155
1964–65	9	164
1965–66	27	191
1966–67	37	228

TABLE 3

NUMBER OF SCHOOL DISTRICTS OF EACH TYPE IN OPERATION DURING VARIOUS SCHOOL YEARS

Type of school district	School year						
	1935–36	1945–46	1955–56	1963–64	1964–65	1965–66	1966–67
Elementary	2,735	2,248	1,533	1,179	1,129	998	829
High school	295	260	233	201	196	168	132
Unified	0	46	92	155	164	191	228
Total districts	3,030	2,554	1,858	1,535	1,489	1,357	1,189

American idea that the control of education is in the hands of the people tends to make community identity even more difficult to define. A community of interest for a university, a baseball team, and a symphony orchestra, for example, is much larger than that usually associated with a public school system.

4. **Administrative and Instructional Staff.** Again, the research in the areas of a recommended and instructional staff varies considerably. Some researchers have suggested that a staff of approximately 50 teachers in an administrative unit is an absolute minimum, whereas others have held to the belief that 200 or more teachers would constitute the absolute minimum. In recent years, the demands for more librarians, nurses and counselors would perhaps even tend to increase this figure.

5. **Economic Base.** The minimal size of a school district when the criterion of an economic base is used depends highly upon the type of financial support that a school district receives. It is doubtful that anyone can say with exactitude what an adequate financial base is. The same situation exists in regard to economic inefficiency. Although many writers have referred to the inability of small districts to provide educational services efficiently, there are no studies specifying the actual enrollment necessary for satisfactory costs per pupil. Most of the studies of cost quality relationship have been based upon attendance centers rather than upon administrative unit data.

SUMMARY

The ideal size of a school district appears to be between 10,000 and 20,000 pupils according to Charles L. Faber, Department Head at the George Peabody College. In the large metropolitan areas, most school districts have more than 20,000 pupils. Few would recommend that these districts be dissolved. However, these districts would do well to develop some type of internal decentralization arrangements.

COMMITTEE HEARING

The Senate Fact Finding Committee on Education convened in Sacramento on August 9 and 10, 1966, to hear testimony pertaining to school district organization. (Senate Resolution 149—Marler.) Nearly all of the witnesses presented statements relating to the provisions of Assembly Bill 145.

Assembly Bill 145

In 1964, Assembly Bill 145, a school unification and school finance bill, was passed which has become in California a most controversial piece of school legislation. This bill, as reported out of a joint conference committee, passed by both houses, and signed by the Governor, provided:

1. A $10 increase in the foundation program for 1964–65;
2. A $10 incentive to reduce class sizes in grades 1, 2 and 3;
3. An increase of $30 per average daily attendance for junior colleges and $10 for adult schools;
4. The removal of the "inside-outside" vote in elections for unifications;

5. The removal of augmented county committees on school district reorganization;
6. A $15 increase in the foundation program in the succeeding years for unified districts and for elementary districts which voted affirmatively in an unsuccessful election;
7. The treatment of non-unified areas for state support purposes and local tax purposes to the level of the foundation program as though the area were unified;
8. A unification election every two years in the territories of the state not unified;
9. The State Board of Education may approve proposals for the formation of districts based upon the division of the territory of existing high school districts provided that the board has determined that the resulting new districts will be adequate in terms of number of pupils enrolled, and adequate in terms of of financial ability, with assessed valuation per pupil not to deviate materially from the assessed valuation per pupil in the original district;
10. The State Board of Education will consider the boundaries of existing high school districts as the minimum geographical base for the organization of individual unified school districts, to be deviated from only in exceptional situations.

Points 6 through 10 above have become the most controverisal sections of this particular law. Much of the opposition has centered around the rules and regulations which the State Board of Education has used to implement and augment the provisions of Assembly Bill 145.

Opposition to Unification

It is extremely difficult to find one or two primary causes for the strong feeling that many have in opposition to A.B. 145. Some witnesses felt that the law was a type of blackmail. Others objected to the so-called "carrot on a stick" approach. The problems of de facto segregation, possible higher taxes, and the loss of local control were ideas advanced to the committee by numerous witnesses. As the committee attempted to determine the causal factors, however, it must be noted that no one opposed the idea or the principle of unification per se.

Splitting of Districts

Only three proposals to divide high school districts have been approved by the State Board of Education since A.B. 145 became effective. They are in the territory of Kern County, Siskiyou High School District and the Oxnard High School District. Numerous witnesses presented to the committee seemingly justifiable examples for the splitting of their particular high school district. The committee feels that the State Board of Education has been too stringent when it has interpreted the phrase "to be deviated from only in exceptional situations."

Increased Opposition

During the past two years, the percentage of successful unification elections has decreased. There are strong indications that voter resistance to unification will continue to mount. In 1964, 88 per cent of the unification elections held in the state were approved by the voters. In 1965, 31 per cent were successful. To date, in 1966, only 12 per cent of the unification elections have passed. Numerous unification elections held last spring were overwhelmingly defeated by a resounding margin.

CONCLUSIONS

1. The State Board of Education has used the criterion of existing high school boundary lines too stringently in approving unification proposals. Other standards such as community identity, geography, and district size should also be used as primary factors.
2. The two-year voting requirement in Assembly Bill 145 often serves as a deterrent in unification elections, particularly when the identical unification proposal previously rejected by the voters is resubmitted to them.
3. In California, too many small districts still exist which are unable to provide adequate educational programs.
4. Under our present state laws, the property tax is a most important factor when unification is considered.

RECOMMENDATION

Four areas of study by the committee this past year are highly interrelated. They are: the statewide property tax; statewide equalization; school district organization; and the State School Building Aid Program. For this reason, the committee recommends that there be appointed, for a period of two years, a joint legislative committee consisting of five members from each house, with the necessary powers and finances, to study the above four areas.

Sacramento, August 9 and 10, 1966

WITNESSES IN ORDER OF APPEARANCE

HONORABLE JESSE M. UNRUH, *Speaker of the Assembly*

MRS. HELEN S. KERWIN, San Mateo

DR. DEAN A. WATKINS, *Legislative Chairman*, San Mateo County School Boards Association

MR. ALLEN B. BEAUMONT, *Chairman*, San Mateo County Committee on School District Organization

MR. WILLIAM L. STORY, Office of Legislative Analyst

DR. MITCHELL SOSO, *Assistant Superintendent*, Santa Rosa City Schools

MRS. MARGUERITE MCLEAN, *Executive Secretary*, California School Districts Association

DR. FERD KIESEL, *Chairman*, Joint Legislative Committee, State Educational Administrative Associations

MR. J. HENRY JEPPESEN, *Board Member*, Rio Linda Union School District

MR. FREDERICK C. JOYCE, *Superintendent*, Rio Linda Union School District

Mr. Gregor D. MacGregor, *President*, Board of Trustees, Middletown Unified School District

Mr. James D. Bennight, *Superintendent-Principal*, Upper Lake Union School District

Mrs. Edna Davert, *Vice President*, Board of Trustees, Milipitas Elementary School District

Mr. Lewis R. Roach, *Board Member*, Willowbrook Elementary School District

Mr. Lloyd D. Dickey, *Superintendent*, Willowbrook Elementary School District

Mr. Leonard I. Talbert, *President*, Board of Trustees, Rowland School District

Dr. E. Maxwell Benton, *Education Specialist*, California Taxpayers' Association

Mr. John F. Rollin, Sonoma County Committee on School District Organization

Mrs. Alfred H. Albietz, American Association of University Women—California State Division

Mr. Richard C. Bartlett, *Executive Director*, California School Employees Association

Mr. Jack W. McLean, Santa Rosa

Mrs. Elvira C. Monroe, *Trustee*, San Carlos Elementary School District

Mr. Albert R. Beardsley, *Superintendent*, San Carlos Elmenetary School District

Mrs. Dorothy I. Gay, *Vice President*, Governing Board, Belmont School District

Mr. Claude Turner, *Superintendent*, Belmont School District

Mr. Harry E. Blair, *Superintendent*, Kern County Schools, Kern County School Boards Association, Kern County Committee on School District Organization, 7th District PTA, Kern County Board of Education

Mr. Ernest C. Hunter, *Superintendent*, Bakersfield City Elementary School District

Mr. David D. Ring, *Member*, Board of Trustees, Reed Union School District

Mr. Ted Kostyshak, California Teachers Association

Mr. Douglas B. Gardner, *President*, Californians for Quality Unified Education

Dr. Ronald Cox, *Associate Superintendent of Public Instruction*, State Department of Education

Mr. William Gillespie, *Member*, Board of Trustees, San Mateo Union High School District

Mr. Carleton Hermann, *Board Member*, San Mateo Union High School District

Mrs. Marietta Larsen, *Member*, Board of Trustees, Tamalpais Union High School District

Mrs. John W. Binckley, *Member*, Marin County Committee on School District Organization

Mr. H. J. Johnson, *Vice President*, San Carlos Chamber of Commerce

Mr. Robert N. Miller, Sequoia Union High School District Committee Opposed to the State Plan of Unification—San Mateo Union High School District Committee Opposed to Forced Unification

Mrs. June Stamm, *Chairman*, Citizens' Committee Opposing Forced Unification—Pacifica

Mrs. Ruth Boudinot, *Member*, Board of Trustees, Laguna Salada Union School District

Mr. Leo Souza, Tiburon

Mrs. Burton H. Lauppe, Sacramento

Mr. Fred W. Bewley, *Advisor*, Schools Unification, Los Angeles County Schools

Mr. Melville E. Driver, Roseville

Mr. Alvar Yelvington, *Staff Representative*, California School Boards Association

CHAPTER V

STATEWIDE PROPERTY TAX

BACKGROUND

Historically, the public school systems of the United States have been dependent upon local governments for a high percentage of their revenue. In California, as in the majority of the other 49 states, the property tax is one of the main sources of local school funds.

For many years, the California Legislature has been cognizant of the fact that one of the public school system's fundamental problems is the great disparity of local tax resources as wealth among school districts. Thus, there is a wide variation in the ability of the local districts to finance these schools and provide an equal educational opportunity.

A measure of a school district's wealth can be obtained by dividing the total assessed valuation by the number of students in attendance, or the computational figure which is called the average daily attendance. Property tax wealth for a local school district then is measured by using the ratio of AV/ADA.

TABLE 4

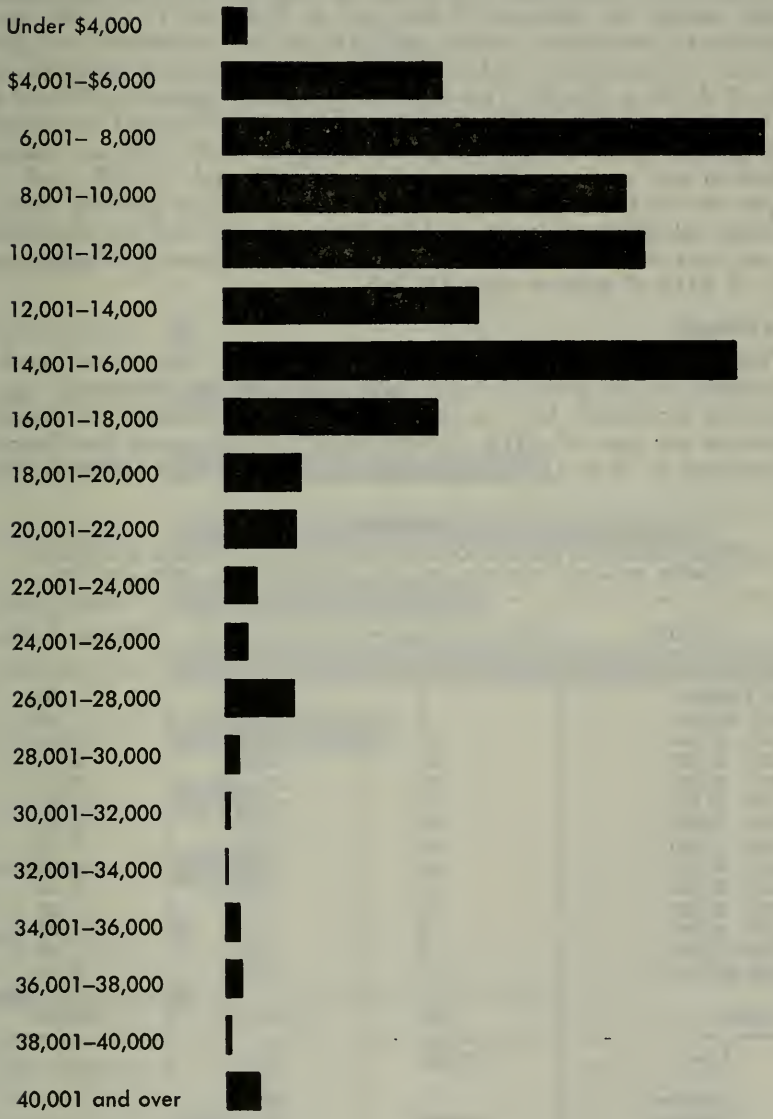
ASSESSED VALUATION PER UNIT OF ELEMENTARY A.D.A., NUMBER OF DISTRICTS, NUMBER OF A.D.A., PERCENT OF A.D.A., ELEMENTARY LEVEL—1965–66

AV/ADA	Number of districts	Number of a.d.a.	Percent of a.d.a.
Under $4,000	20	27,515	.91
$4,001–$6,000	53	223,698	7.38
6,001– 8,000	101	552,394	18.21
8,001–10,000	119	410,310	13.53
10,001–12,000	107	427,415	14.09
12,001–14,000	87	261,536	8.62
14,001–16,000	79	538,186	17.75
16,001–18,000	80	218,231	7.20
18,001–20,000	61	79,719	2.63
20,001–22,000	49	72,897	2.40
22,001–24,000	36	35,107	1.16
24,001–26,000	25	23,013	.76
26,001–28,000	39	72,970	2.41
28,001–30,000	24	14,425	.48
30,001–32,000	24	6,196	.20
32,001–34,000	19	3,194	.10
34,001–36,000	19	11,003	.36
36,001–38,000	11	15,215	.50
38,001–40,000	16	6,415	.21
40,001 and over	212	33,313	1.10
Totals	1,181	3,032,752	100.00
Low	$57	$57	
Q1	--	7,836	
Average	--	13,001	
Median	16,493	11,415	
Q3	--	15,381	
High	2,187,042	2,187,042	

Source: Department of Education.

CHART A

ASSESSED VALUATION PER UNIT OF RESIDENT A.D.A.
PERCENT OF RESIDENT A.D.A.
ELEMENTARY LEVEL—1965–66



Source: Department of Education

VARIATIONS IN ASSESSED VALUATION

Elementary Schools

Table 4 and Chart A show the range of AV/ADA, the number of districts, the number of ADA, and the percentage of ADA for elementary school districts in the State of California. They indicate: (1) the gross variation in assessed valuation per unit of ADA of elementary pupils among the districts of the state is 38,396 to 1; (2) the gross variation in local ability is from $57 to $2,187,042 in assessed valuation per unit of elementary ADA; (3) the average assessed valuation per unit of ADA is $13,001 (the statewide assessed valuation divided by the statewide average daily attendance); (4) 50 per cent of the elementary pupils in the state attend schools in districts with an assessed valuation per unit of ADA of between $7,836 and $15,381; and (5) 25 per cent of the elementary pupils attend schools in districts with an assessed valuation per unit of ADA below $7,836, and the remaining 25 per cent attend schools in districts with an assessed valuation per unit of ADA of greater than $15,381.

High Schools

Table 5 and Chart B show the same data for the high school level as are shown in the previous table and chart for the elementary level. The data presented here show: (1) the gross variation in assessed valuation per unit of ADA of high school pupils among the districts of the state is 38 to 1; (2) the gross variation in local ability is from

TABLE 5

ASSESSED VALUATION PER UNIT OF HIGH SCHOOL A.D.A., NUMBER OF DISTRICTS, NUMBER OF A.D.A., PERCENT OF A.D.A., HIGH SCHOOL LEVEL—1965–66

AV/ADA	Number of districts	Number of a.d.a.	Percent of a.d.a.
Under $10,000	1	597	.05
$10,001–$15,000	2	9,065	.78
15,001– 20,000	19	106,380	9.13
20,001– 25,000	46	168,365	14.46
25,001– 30,000	59	238,446	20.47
30,001– 35,000	51	138,244	11.87
35,001– 40,000	43	283,711	24.36
40,001– 45,000	34	97,022	8.33
45,001– 50,000	25	37,274	3.20
50,001– 55,000	10	41,740	3.58
55,001– 60,000	10	6,943	.60
60,001– 65,000	8	8,732	.75
65,001– 70,000	8	3,271	.28
70,001 and over	43	24,932	2.14
Totals	359	1,164,722	100.00
Low	$7,331	$7,331	
Q1	--	25,141	
Average	--	33,831	
Median	35,006	32,153	
Q3	--	38,017	
High	281,115	281,115	

Source: Department of Education.

$7,331 to $281,115 in assessed valuation per unit of high school ADA; (3) the average assessed valuation per unit of ADA is $33,831 (the statewide assessed valuation divided by the statewide average daily attendance); (4) 50 per cent of the high school pupils in the state attend schools in districts with an assessed valuation per unit of ADA of between $25,141 and $38,017; and (5) 25 per cent of the high school pupils attend schools in districts with an assessed valuation per

CHART B

ASSESSED VALUATION PER UNIT OF RESIDENT A.D.A.
PERCENT OF RESIDENT A.D.A.
HIGH SCHOOL LEVEL—1965–66



Source: Department of Education

unit of ADA less than the minimum figure given above, and the remaining 25 per cent attend schools in districts with an assessed valuation per unit of ADA greater than the maximum figure above.

Junior Colleges

Similar data on the distribution of the local ability at the junior college level are shown in Table 6 and Chart C. They reveal: (1) the gross variation in assessed valuation per unit of ADA of junior college pupils among the districts of the state is 77 to 1; (2) the gross variation in local ability is from $53,240 to $408,083 in assessed valuation per unit of ADA; and (3) the average assessed valuation per unit of ADA is $151,502 (the assessed valuation divided by the statewide average daily attendance).

TABLE 6

ASSESSED VALUATION PER UNIT OF RESIDENT A.D.A., NUMBER OF DISTRICTS, NUMBER OF A.D.A., PERCENT OF A.D.A., JUNIOR COLLEGE LEVEL—1965–66

AV/ADA	Number of districts	Number of a.d.a.	Percent of a.d.a.
$50,000–$75,000	2	1,850	0.789
75,001–100,000	7	20,662	8.815
100,001–125,000	16	58,127	24.800
125,001–150,000	14	49,622	21.171
150,001–175,000	9	29,013	12.387
175,001–200,000	6	57,603	24.576
200,001–225,000	3	12,921	5.513
225,001–250,000	0	--	--
250,001–275,000	2	1,330	0.567
275,001–300,000	0	--	--
300,001–325,000	1	333	0.142
325,001–350,000	4	2,231	0.952
350,001–375,000	0	--	--
375,001–400,000	0	--	--
400,001–425,000	1	695	0.297
Totals	65	234,387	100.000
Low	$53,240	$53,240	
Median	149,300	131,589	
Average	--	151,502	
High	408,083	408,083	

Source: Department of Education.

TAX RATES

The gross variations in the amounts that a 10-cent tax rate per $100 of assessed valuation will produce per ADA for the poorest and wealthiest elementary, high school, and junior college districts in California are shown below:

	Wealthiest district	*Poorest district*
Elementary	$2,187.04	$0.057
High school	281.12	7.33
Junior college	408.05	53.24

Actual total tax rates for public school purposes are shown in Table 7 and Chart D. It should be emphasized that these figures are the tax rates for all educational purposes and include current operating

expenses, bond redemption, repayment of state loans, and county authorized taxes for pupils in grades kindergarten through junior college. They indicate: (1) the highest total tax rate is approximately $5\frac{1}{2}$ times the lowest; (2) the range is from $1.2710 to $6.9950; (3) the average tax rate derived on an average daily attendance basis is $4.7143.

CHART C

ASSESSED VALUATION PER UNIT OF RESIDENT A.D.A.
PERCENT OF RESIDENT A.D.A.
JUNIOR COLLEGE LEVEL—1965–66



Source: Department of Education

TABLE 7

TOTAL TAX RATES FOR SCHOOL PURPOSES, NUMBER OF DISTRICTS, NUMBER OF A.D.A., PERCENT OF A.D.A.—1965–66

	Number of districts	Number of a.d.a.	Percent of a.d.a.
$1.0001–$1.2500	0	0	
1.2501– 1.5000	2	22	.00
1.5001– 1.7500	4	183	.01
1.7501– 2.0000	11	1,345	.05
2.0001– 2.2500	9	3,143	.10
2.2501– 2.5000	26	5,865	.19
2.5001– 2.7500	41	13,883	.46
2.7501– 3.0000	57	69,858	2.30
3.0001– 3.2500	82	44,264	1.46
3.2501– 3.5000	83	38,791	1.28
3.5001– 3.7500	109	159,286	5.25
3.7501– 4.0000	105	91,064	3.00
4.0001– 4.2500	131	192,822	6.36
4.2501– 4.5000	101	617,323	20.36
4.5001– 4.7500	124	325,097	10.72
4.7501– 5.0000	98	388,284	12.80
5.0001– 5.2500	73	295,543	9.75
5.2501– 5.5000	52	211,461	6.97
5.5001– 5.7500	31	181,429	5.98
5.7501– 6.0000	24	218,789	7.21
6.0001– 6.2500	11	90,746	2.99
6.2501– 6.5000	13	78,773	2.60
6.5001– 6.7500	2	2,154	.07
6.7501– 7.0000	1	2,627	.09
Totals	1,190	3,032,752	100.00
Low	$1.2710	$1.2710	
Q1	--	4.3050	
Median	4.1261	4.7143	
Q2	--	5.2829	
High	6.9950	6.9950	

Source: Department of Education.

COMMITTEE HEARING

A possible statewide property tax was studied by the Senate Fact Finding Committee on Education at a public hearing held in Los Angeles on September 8, 1966.

Proposed Statewide Property Tax

Three different presentations were made to the Senate Fact Finding Committee on Education in an attempt to show what a statewide property tax could do to help alleviate the wide discrepancy in a local district's ability to raise money and to provide an equal educational opportunity.

One presentation was for a 40¢ tax per $100 of assessed valuation for elementary school purposes, and a 60¢ tax per $100 of assessed valuation per high school student. However, the representative from the Legislative Analyst's office, in his concluding remarks on this proposal, stated: "The main disadvantage of the proposal is that mandatory tax rates set at the above levels enable the richest districts of the state to

CHART D

TOTAL TAX RATES FOR SCHOOL PURPOSES
PERCENT OF A.D.A.
1965–66



Source: Department of Education

finance much higher expenditure levels above the foundation program at lower tax rates than those of the poorest districts."

Another presentation was for a statewide tax of $1.50 per $100 of assessed valuation at the elementary level (raising $400 per ADA) and a statewide tax of $1.25 per $100 of assessed valuation at the secondary school level (raising $600 per ADA). The $400 and $600 figures were the approximate average current expense of education for elementary and high school students in 1965–66.

A third presentation showed what the effects of a statewide tax set at $1.35 for elementary school purposes, $0.85 for high school purposes, and $0.35 for junior college purposes could provide. For elementary students this would mean a $395 foundation program; for high school students, a $515 foundation program; and for junior college students, a $600 foundation program.

Some of the doubts concerning a statewide property tax presented to the committee were:

1. By comparison to the property tax, the sales tax is better suited for school support than it is for use by other local governments;
2. No analysis has been made of what the tax shifting might be as a result of a statewide property tax;
3. Any significant change in the system of school support must contain assurances of administrative improvements and decreased future reliance on the property tax;
4. Any specific proposal for a statewide property tax would have to be appraised in the broader context of general tax reform, the deomonstrable burdensome level of local property taxation in many communities, and the need for more adequate funding of public education in California;
5. Any sound measure to provide for a degree of statewide equalization of the local property tax ought to be coupled with long overdue reductions in certain property taxes and accompanied by meaningful increases in general school support from broad-based state taxes;
6. Any statewide property tax equalization proposal should not stifle local tax leeway or any local initiative to exceed statewide standards or to engage in experimentation;
7. The tradition of locally established, collected, and distributed property taxes gives the property tax bearer his best protection against potential overuse of what is a poor tax at best.

CONCLUSIONS

1. There is wide variation among the school districts in their assessed valuation per unit of average daily attendance.
2. There is also wide variation among the school districts in their ability to support educational programs with equivalent taxes.
3. Even with 100 percent unification along high school district boundary lines, this variation would be only slightly lessened.
4. A statewide property tax would do much toward eliminating the wide variations the districts now have in their ability to provide for an adequate educational program.
5. Low wealth districts would benefit most from a statewide property tax. Basic aid districts would have less money available for their expenditure programs and would need to raise their current district tax rates to maintain their present educational program.

RECOMMENDATION

Much of the opposition to a proposed statewide property tax exists because there are no figures to compute what the results and effects would be for each school district. Therefore, it is recommended that a specific proposal be made for futher study. (See recommendation in Chapter IV of this report).

Los Angeles, September 8, 1966

WITNESSES IN ORDER OF APPEARANCE

Mr. Clinton Jordan, Office of Legislative Analyst

Mr. James Murdoch, Office of Legislative Analyst

Dr. Ronald Cox, *Associate Superintendent of Public Instruction*, State Department of Education

Mr. Charles L. Smithers, *Director of State Affairs*, California Taxpayers Association

Dr. Frederick Fox, *Assistant Superintendent (Budget)*, Los Angeles City Schools

Mr. Thomas P. Lantos, *Consulting Economist*, California Teachers Association

Mr. Alvar Yelvington, *Staff Representative*, California School Boards Association

Mrs. Jean Tonks, *School Finance Committee*, California School Boards Association

Mr. Paul N. McCarron, California Real Estate Association

Mr. Arthur Pokorny, Oakland Unified School District

CHAPTER VI

STATE SCHOOL BUILDING AID PROGRAM

Senate Resolution 235 (Rodda)

BACKGROUND

The California State Constitution places on the Legislature the responsibility for establishing and maintaining a public school system. As a means of securing local supervision of schools by resident citizens, the Legislature has authorized the establishment of numerous types of local school districts. State funds have been provided for these districts to supplement local taxation for the operation of schools and for the construction of school facilities.

Prior to 1947, state funds were not provided for school buildings. The local school districts were given the responsibility of providing school housing. The method of financing was the property tax.

In 1947, the Legislature recognized the emergency caused by the large population concentrated in subdivided areas, aggravated by the inflated cost of building. Many classes were on double and triple sessions. The Legislature made an appropriation of $30 million, which was reduced by executive veto of the Governor to $20 million. With this money, the Department of Finance, through the State Allocation Board, allocated funds to districts which had used their bonding capacity and had levied the maximum school tax. No priority was provided in this legislation and the first districts to apply were allocated funds.

The Legislature at the 1948 session appropriated $50 million, which was reduced by executive veto of the Governor to $35 million. The pur-

TABLE 8

SUMMARY OF FUNDS MADE AVAILABLE UNDER ALL STATE SCHOOL BUILDING AID LAWS ADMINISTERED BY STATE ALLOCATION BOARD THROUGH DECEMBER 1966

Name of law	Year funds authorized	Source of funds	Amount authorized (millions)*
School Building Aid Law of 1947	1947	Appropriation	$20.0
School Building Aid Law of 1947	1948	Appropriation	35.0
Schools for Cerebral Palsied	1949	Appropriation	0.5
School Building Aid Law of 1949	1949	Bonds	250.0
School Building Aid Law of 1952	1952	Bonds	185.0
School Building Aid Law of 1952	1954	Bonds	100.0
School Building Aid Law of 1952	1956	Bonds	100.0
State Project Area School Construction Law	1957	Appropriation	1.0
School Building Aid Law of 1952	1958	Bonds	220.0
School Building Aid Law of 1952	1960	Bonds	300.0
School Building Aid Law of 1952	1962	Bonds	200.0
School Building Aid Law of 1952	1964	Bonds	260.0
School Building Aid Law of 1966	1966	Bonds	275.0
Total			$1,946.5

* Net amounts, excluding reappropriations and appropriations representing temporary loans.
(*Source:* Legislative Analyst).

pose of these funds was to continue allocations to districts which did not get their applications in for approval during 1947. At the end of this program, there were still over one hundred applications on file with the State Allocation Board for state aid.

In 1949, the Legislature decided to greatly expand the State School Building Aid Program. General Obligation Bonds, rather than appropriations from the General Fund, were to be used for financing.

The first bond issue of $250 million was passed by the voters that year. Since that time, the program has been financed primarily by state bond issues which, including the one passed in 1966, have totaled nearly $2 billion as shown in Table 8 below. In the past 19 years, the state has assisted more than 700 school districts in providing almost 52,000 classrooms with a total seating capacity for 1.7 million pupils.

COMMITTEE HEARING

The Senate Fact Finding Committee on Education studied Senator Rodda's Senate Resolution 235 in Los Angeles on September 9, 1966. This resolution requested an interim study of the State School Building Aid Program to include: (1) building area allowances; (2) providing school housing for exceptional children; (3) providing the facilities for adult education; (4) the effects upon the program of the class size provisions of Assembly Bill 145 (1964 First Extraordinary Session); (5) overall review of the program from the standpoint of the cost burden to the state and the local school district; (6) alternative means to provide for future financing; and (7) evaluation of the total program in the light of recent current changes in educational concepts and practices.

Because of time limitations, the committee, at the request of the author, decided to focus its main attention upon the State School Building Aid Program as it is affected by changing educational concepts and techniques, specifically as they affect school building standards. It was also noted by the committee that the Legislative Analyst's office had issued reports which addressed themselves to (2), (4), and (6) listed above. While these reports were subjected to criticism by at least one other state agency, they do provide for a point of departure in future studies. No inquiry had been made into the changing school building needs as they are related to the schools' present and future instructional programs. This was the focus of the committee study.

Space Allotments

Since 1949, the space allotments for the schools has remained virtually unchanged. The recommended square feet per student in an elementary school is 55 square feet; in a junior high school, 75 square feet; and in a high school, 80 square feet.

Various bills have provided for the allocation for state school building aid moneys for programs for exceptional children. Table 9 shows the class size limitation and the average square footage allowance which are authorized for these programs. The expenditure of state bond moneys providing school buildings for children enrolled in compensatory education was authorized in 1966. Authorization to provide school buildings for children of migrant farm workers was also added in 1966. Most of the building area allowances for exceptional children

TABLE 9

AREA ALLOWANCES UNDER THE STATE SCHOOL BUILDING AID PROGRAM FOR FACILITIES FOR EXCEPTIONAL CHILDREN

Facility to be used for	Number of students to be housed per classroom	Average square footage allowance
Aphasic	6–10	1,335
Blind	8–12	1,410
Deaf	6–10	1,335
Educationally handicapped	9–12	1,000
Hard of hearing	12–18	1,635
Mentally retarded	12–18	1,635
Orthopedically handicapped and cerebral palsied	12	4,000
Partially seeing	12–18	1,635
Severely mentally retarded	7–12	1,290

Source: Legislative Analyst.

were inaugurated at the request of interested parents and special interest groups. The committee did not question the desirability of providing school housing allowances for these children. Its concern is the relationship these provisions have to the entire State School Building Aid Program.

Changes in Programs and Practices

During the past 20 years, numerous changes in both elementary and secondary school instructional programs and practices have been noted. Below are listed some relevant changes which have an important bearing upon the school housing needs of an individualized district:

Elementary Schools

1. Ungraded classrooms.
2. Team teaching.
3. New mathematics involving different concepts of program and instruction.
4. Teaching machines and other program learning devices.
5. Closed and open circuit television.
6. Use of teacher aids.
7. Expanded elementary school libraries.
8. New services for health, attendance, counseling and speech therapy.
9. Remedial reading.
10. Classes for preschool children (noted in Chapter I of this report).
11. Inauguration of numerous federal programs which do not provide for additional housing (noted in Chapter I of this report).

Secondary Schools

1. Flexible scheduling which involves the regular school schedules and greater variations of time allotments on a day-to-day basis.
2. Team teaching which includes both large group and small group instruction.
3. The shift of instructional emphasis from lecture to laboratory techniques.
4. Wide use of new instructional media, including many in the area of audiovisual education.
5. Increased emphasis on instruction in the fields of science, mathematics and foreign language.
6. Expansion in the field of adult education, with emphasis on retraining, parent education, and the culturally disadvantaged.

SUMMARY

During the past 20 years, nearly $2 billion have been expended for school housing allowances, using only the criterion of square footage allotments. Funds expended for site acquisition and development have more than doubled in the past 15 years. Expenditures of state funds for furniture and equipment have quadrupled over the same period of time. Special education programs have been rapidly increasing. School space needs have been modified by changing instructional programs and practices.

To date, there has been no truly comprehensive study made of the State School Building Aid Program. The executive officer of the State Allocation Board, in his testimony before the committee, stated: "It has been brought to our attention repeatedly by educators and school districts who feel that the building area allowances are not sufficient to give them the facilities they require. They have exhibited their concern through the introduction of legislation calling for increases in building area allowances for the construction of special purpose facilities. These requests have never been co-ordinated with the total requirements so it has been very difficult to determine whether or not the request for the problem of an individual district for a single case or whether many school districts have experienced the same problem. . . . We have always felt that educational policies should be established by experts in the particular field."

CONCLUSIONS

1. Methods of teaching and materials for instructional purposes are changing continually. These changes have a direct bearing on the schools' building requirements.

2. New programs such as foreign language, special education classes, reduction of class size, remedial reading, etc., have in recent years altered the needs of school districts for building space.

3. A complete and comprehensive study of the State School Building Aid Program is long overdue.

RECOMMENDATION

A comprehensive study of the State School Building Aid Program should be undertaken so that it does not become unduly fragmented. (See recommendation in Chapter IV of this report).

Los Angeles, September 9, 1966

WITNESSES IN ORDER OF APPEARANCE

MR. PAUL HOYENGA, *Executive Officer*, State Allocation Board

MR. CHARLES L. SMITHERS, *Director of State Affairs*, California Taxpayers Association

DR. CHARLES D. GIBSON, *Chief*, Bureau of School Planning, State Department of Education

DR. FRANK KITTINGER, *Chairman*, State School Building Aid Committee, California Association of School Administrators

DR. JOHN L. MILES, JR., *Member*, State School Building Aid Committee, California Association of School Administrators

WRITTEN TESTIMONY RECEIVED

MR. CLINTON JORDON, Office of Legislative Analyst

APPENDIX A

STATE OF CALIFORNIA

OFFICE OF LEGISLATIVE COUNSEL

3021 STATE CAPITOL, SACRAMENTO 95814
110 STATE BUILDING, LOS ANGELES 90012

Sacramento, California
January 12, 1966

Honorable Richard J. Dolwig
515 Allerton Street
Redwood City, California 94063

County Superintendents of Schools: Coordination of Federal Education Aid Programs—No. 1978

Dear Senator Dolwig:

QUESTION

You ask whether the present law affords county superintendents of schools authority to effectively coordinate the various programs which may be established by school districts under federal legislation such as the Elementary and Secondary Education Act of 1965 and the National Defense Education Act of 1958. In this connection you ask whether such coordination might be effected by arrangements entered into under the state laws dealing with the joint exercise of powers by local governmental agencies, or other laws dealing with cooperative or joint activities between county superintendents of schools and school districts.

OPINION

In our opinion present law does not afford county superintendents of schools authority to effectively coordinate the various different programs which may be established by school districts under federal laws such as the Elementary and Secondary Education Act of 1965 or the National Defense Education Act of 1958. New enabling legislation would have to be enacted to provide for such coordination. Also, such coordination could not be effected under laws dealing with the joint excercise of powers by local governmental agencies, or other statutes pertaining to cooperative or joint action between county superintendents and school districts.

ANALYSIS

In Section 8501 of the Education Code, the Legislature has declared, with reference to county superintendents of schools and the services to be financed by the county school service fund, that it is in the interest of the state and the people that those officers provide coordination of the educational program among school districts under their respective jurisdictions. Section 8501 further specifies that such coordination of the educational program constitutes the greatest continuing need to be met through the county school service fund, and that it shall involve providing professional services to coordinate courses of study,

guidance services, health services, special education, attendance activities, and advisory services in school business administration. A declaration of legislative intent concerning coordination of the educational program appears in the section, and reads as follows:

"It is the further intent of the Legislature that:

"(a) Services involving the coordination of the educational program which have among others the purposes of (1) enforcing minimum standards, (2) improving the educational program, and (3) promoting order and reasonable uniformity in the educational program shall be provided, except as may be specifically authorized, at the district level, reserving to the district the opportunity and responsibility for internal improvement, and that such services will be provided in such a manner that recognition will be given to the responsibilities placed upon school districts by the Legislature to determine and administer their own educational program.

"* * * ."

The services of county superintendents of schools relating to coordination of educational programs must be included in the county school service fund budget, and the proposed expenditures therefor must be supported by justification documents (Ed. C., Secs. 8501.1, 18351.2). With the approval of the county board of education, and subject to rules and regulations of the Superintendent of Public Instruction, a county superintendent of schools may employ qualified personnel to provide for these services (Ed. C., Sec. 8503). The services form a part of the so-called "other purposes" functions of the offices of county superintendents, and are financed by apportionments to county school service funds from the State School Fund (Ed. C., Sec. 18352). The amount annually appropriated and allocated for apportionment from the State School Fund for all "other purposes" functions of county superintendents of schools is $3.06 per unit of average daily attendance in all grade levels in the state (Ed. C., Secs. 17301, 17303.5).

The statutory provisions dealing with the performance of the coordination function by county superintendents of schools were enacted much earlier in time than were the federal laws here in question (see, for example, Stats. 1955, Ch. 1763), and it could at least be argued that in so directing that the "education program" be coordinated in the school districts in the respective counties the Legislature did not contemplate the coordination of programs which might be undertaken by districts pursuant to federal laws.

Many of the programs to be undertaken in local school districts pursuant to the federal laws in question are of a type which, in our opinion, represent modifications of or departures from the concept of "educational program" as the same is embodied in these sections of the Education Code. Thus, according to the publication *American Education* (April, 1965) published by the Office of Education and Welfare, which contains a special report on the Elementary and Secondary Education Act of 1965 (Public Law 10, 89th Cong., 20 U.S.C. Secs. 241a, et seq.), the programs suggested for adoption to meet the needs of educationally deprived children include the following: preschool training programs, enrichment programs on Saturday mornings, increased guidance services for pupils and families, school-job coordina-

tion, home and school visitation and social workers, language laboratories, science and reading laboratories, purchase of musical recordings of classical nature and recordings of poems and addresses, scheduling of concerts, dramas, and lectures, mobile art exhibits and libraries, and bookmobiles to visit homes.

Similarly, the National Defense Education Act of 1958 (20 U.S.C., Secs. 401 et seq.) provides for the allocation of federal funds to state educational agencies to be expended for projects formulated by school districts for acquisition of laboratory and other sepcial equipment suitable for use in providing education in science, mathematics, history, civics, geography, economics, modern foreign language, English, or reading in public elementary and secondary schools. Other purposes are the acquisition of testgrading equipment for such schools, and the expansion and improvement of supervisory or related services in public elementary and secondary schools in the fields of science, mathematics, history, civics, geography, economics, modern foreign languages, English and reading. (See 20 U.S.C. Sec. 443.)

The various programs provided for by the Economic Opportunity Act of 1964 (Public Law 452, 88th Congress—42 U.S.C., Secs. 2701 et seq.), insofar as they affect the operations of local school districts, also involve activities which are generally collateral or in addition to the conduct of the regular educational program.

Each of these federal laws provides for control to be exercised by the "state educational agency" (State Department of Education) or by an agency of the federal government itself, to ensure compliance with standards and requirements by participating local agencies and organizations. We can find nothing therein which might be construed to vest coordinative authority or similar authority and responsibility in the office of the county superintendent of schools.

An examination of legislation enacted at the recent sessions of the California Legislature to accept and implement these federal laws or to establish similar state programs, discloses that while participation by state officers and agencies, school districts, and in some instances, county superintendents of schools is directed or authorized, no special coordinative duties and responsibilities are vested in the county superintendent of schools over the local operations. (See: Ed. C., Secs. 551 et seq., as revised by Stats. 1965, Ch. 1163; the "McAteer Act," Ed. C., Secs. 6450 et seq., as revised and recodified by Ch. 1163, Stats. 1965; W. & I.C. Secs. 1645–1649, Ed. C., Secs. 16641–16644—preschool education—added by Ch. 1248, Stats. 1965; the "Miller-Unruh Basic Reading Act of 1965," Ed. C., Secs. 7770 et seq., Ch. 1233, Stats. 1965; Ed. C., Secs. 6060 et seq.—special elementary programs and classes in English—Ch. 1234, Stats. 1965; Ed. C., Secs. 6481 et seq.—English language centers—Ch. 1536, Stats. 1965.)

With reference to effecting coordination under the laws dealing with joint exercise of powers (Gov. C., Secs. 6500–6513, incl.), it must be noted that the joint exercise of powers by governmental agencies is permissible only with respect to powers which are *common* to the agencies (Gov. C., Sec. 6502). The same concept is embodied in the provisions of Section 1061 of the Education Code, which authorizes agreements between school district governing boards and county superintendents for performance of services. Most of the state statutes cited

above do not provide for program participation by the county superintendents of schools, and permit participation at the local level by school districts only. Under those acts, then, there can be no joint exercise of powers by the county superintendent of schools and a school district. Also, both the Elementary and Secondary Education Act of 1965, and the National Defense Education Act of 1958, define the "local educational agencies" which are to participate in the programs in such a way as to include, for most purposes, school districts only, insofar as California is concerned (see 20 U.S.C. Secs. 244, 403).

Finally, assuming that a coordinative operation of the type proposed would entail additional expense, it might be necessary to increase the amount of $3.06 per pupil in average daily attendance in the state which is presently being provided through the State School Fund to county school service funds for "other purposes."

On this basis we conclude that some form of new enabling legislation must be enacted to vest in county superintendents of schools the authority and responsibility for effectively coordinating the school district programs undertaken under the federal laws in question.

Very truly yours,

George H. Murphy
Legislative Counsel

By
Ernest H. Kunzi
Deputy Legislative Counsel

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APPENDIX B

SUPERINTENDENT OF SCHOOLS
COUNTY OF ALAMEDA

224 WEST WINTON AVENUE
HAYWARD, CALIFORNIA

January 28, 1966

Mr. George H. Murphy
Legislative Counsel
3021 State Capitol
Sacramento, California 95814

Dear Mr. Murphy:

A copy of an opinion rendered by your office at the request of the Honorable Richard J. Dolwig, dated January 12, 1966, on the subject of the authority of the County Superintendent of Schools to coordinate federal aid to education programs has come to my attention. Careful study of the opinion leads me to the conclusion that the opinion is defective in two instances:

1. In the subject opinion, the concept of coordination of school district educational programs, as defined by the Legislature and practiced by the several county superintendents of schools in the State, is equated with the control or supervision of district educational programs. This is in error.
2. Two recent Legislative enactments touching upon the services of the county superintendents of schools with respect to federal aid programs have been overlooked in the opinion.

I call these matters to your attention in order that your office may evaluate them.

1. Coordination vs. Control

The subject opinion confuses coordination of educational programs with control of educational programs. This is made clear in the 4th paragraph on page 4 of the opinion. After describing the services authorized in several federal enactments, this paragraph reads:

> "Each of these federal laws provides for *control* to be exercised by the "state educational agency" (State Department of Education) or by an agency of the federal government itself, *to insure compliance with standards and requirements* by participating local agencies and organizations. We can find nothing herein which might be construed to vest *coordinative authority* or similar authority and responsibility in the office of the county superintendent of schools." (emphasis supplied.)

This paragraph makes clear that "coordination" is regarded, in this opinion as "control", exercised "to insure compliance with standards and requirements." However, the coordination of school district educational programs by county superintendents of schools, as defined in Chapter 6 of Division 7 of the Education Code (commencing at Section 8501), is not the control or supervision of school district programs. True, "enforcing minimum standards" is a part,—but only a minor part—of the coordinative function of county superintendents. Rather, "improving educational programs" and "promoting order and reasonable uniformity" constitute the basic components of coordination. In fact, the "direct operation of an educational program by the county superintendent of schools" is limited to programs "specifically authorized by the Legislature." (Education Code 8501(d)).

The subject opinion rightly states that county superintendents may not *control,* which would involve the county superintendent in direct operation of, school district programs, whether federally supported or not. But to consider such control as coordination, is to ignore the unique nature of the coordinative function.

Coordination is consultation, not control; services are offered, not imposed; districts are encouraged to adopt newer practices, not required to do so; information, data, the results of research are made available to districts for their evaluation and possible use; districts with common problems are brought together and expert assistance is provided by the county superintendent in order that the best possible solutions may be developed *by the districts;* the office of the county superintendent serves as the locus of communication and information, where specialists are available to assist, interpret, analyze, evaluate—in a word, to *coordinate* education in the county. The county superintendent, however, has no authority to force compliance. He stands between the local districts, possessing broad responsibilities to control the kind and quality of educational programs to be provided, and the State Department of Education charged with providing equal educational opportunity to every pupil in the State.

The concluding paragraph of the subject opinion, states: ". . . new enabling legislation must be enacted to vest in county superintendents of schools the authority and responsibility for effectively coordinating (read: controlling?) school district programs undertaken under the federal laws in question." This is true so long as coordination is seen as control. In fact, enabling legislation would be needed to give county superintendents authority and responsibility for coordinating (within the meaning of the term as used by your office) any district program. County superintendents, however, do not want or need *this* kind of authority and could not, under our state system of public instruction, effectively utilize it.

2. New Legislation

While passing reference to recently enacted legislation is made, in the opinion, I would call your attention to two statutes.

1. The "McAteer Act", (Education Code Sections 6450 *et. seq.* Chapter 1163, Statutes 1965) contains the following section:

"6454. Each county superintendent of schools is authorized, upon request, to provide consultative and coordination services for the school districts under his jurisdiction which have established programs of compensatory education under this chapter. Such activity shall be financed through the county school service fund, and shall be subject to budget review pursuant to Section 18351."

Education Code Section 6456, enacted at the same time, states:

"6456. The purpose of this article is to establish criteria to guide local districts in making applications for federal funds under the Elementary and Secondary Education Act of 1965 as accepted by Chapter 6 (commencing with Section 570) of Division 2. . . ."

Is this not adequate authorization for county superintendents, upon request of school districts as the applicant agencies, "to provide consultative and coordination services" to assist such districts to make applications for funds, and to assist them to operate programs in compensatory education funded under the Elementary and Secondary Education Act of 1965 (PL 89-10)?

2. Since the subject opinion goes beyond the Elementary and Secondary Education Act of 1965, and discusses other federal aid programs, I draw your attention to Education Code Section 1006 (Chapter 81, Statutes 1965) which reads:

"1006. The governing board of any school district, or any county superintendent of schools, may participate in any program authorized by the Economic Opportunity Act of 1964.

"Participation may include, but is not limited to entering into agreements with the Director of the Office of Economic Opportunity Act of 1964" (PL 88-452; 78 Stat. 508) and acts amending or supplementing that act . . ."

Does this not provide for county superintendents to "participate" to the extent that other sections of the Education Code define and limit the functions of the county superintendent?

One further comment: The subject opinion contains an awkward and restrictive interpretation of legislative intent, and places a most narrow interpretation on the meaning of "educational program." The opinion states (paragraph 2, page 3):

"The statutory provisions dealing with the performance of the coordination function by county superintendents of schools were enacted much earlier in time than were the federal laws here in question . . . and it could at least be argued that in so directing that the "educational program" be coordinated in the school districts in the respective counties the Legislature did not contemplate the coordination of programs which might be undertaken pursuant to federal laws."

This seems to say that, in the opinion of your office, county superintendents of schools are restricted to coordinating those parts of school district educational programs which were in operation during or prior to 1955 when Chapter 1763, authorizing the coordinative functions of county superintendents of schools, was enacted. Recognizing that educational programs are constantly changing—that one of the basic purposes of coordination by county superintendents of schools is to effect such change—this interpretation creates two classes of district operations—those prior to 1955 which may be coordinated by county superintendents and post-1955 operations which may not be so coordinated. A logical extension of this would find county superintendents unable to coordinate programs of foreign language in the elementary school, program for the educationally handicapped, continuation education and recent enlargements and extensions of vocational education, reading, pre-school programs and other programs or modifications of programs permitted or mandated by the Legislature after 1955. This seems akin to holding that a court of law lacks jurisdiction over acts defined as crimes subsequent to the creation of the court.

The subject opinion also states:

> "Many of the programs to be undertaken in local school districts pursuant to federal laws in question are of a type which, in our opinion, represent modifications of or departures from the concept of "educational program" as the same is embodied in these sections ____ of the Education Code."

As pointed out above, "modifications of" educational programs is a major purpose of coordination, as coordination is defined in the Education Code. As for these federal programs being "departures from" existing educational programs, you should be advised that all the examples of such "departures" listed in the subject opinion are now components of educational programs, or are tools by which educational programs are provided. All of the activities quoted from *American Education* (April 1965), now appear in California school districts. All are a part of school districts' educational programs and all are now subject to the coordinative efforts of county superintendents of schools.

For example:

Pre-school training programs are authorized by Education Code Section 16643 and 6458(c).

Enrichment programs on Saturday mornings are authorized by Education Code Section 6423 and 5 Cal. Adm. Code 199.12(e)(5).

Guidance services for children and families are described in Education Code Section 13055(h) and 6458(e).

School job coordination required by the nature of pre-apprenticeship educational programs and continuation education program requirements. (See Chapter 7 of Division 9 of Education Code).

Home visitation by school social workers and others is an integral part of school health, and pupil personnel services. (See Education Code Section 6457(e)).

My concern, which may be inferred from this too lengthy letter, is that the opinion rendered at the request of Senator Dolwig presumes the existence of a certain relationship between school districts and county superintendents of schools which, in fact, does not exist.

There may well be the need for enabling legislation which would permit county superintendents to provide for the coordination of federal aid programs, but let us make certain that this "Coordination" is congruent with the service now authorized with respect to state/local funded programs.

Sincerely,

ROBERT C. CONEY
Deputy Superintendent

RCC:al
cc: Ernest H. Kunzi, Deputy Legislative Counsel
James E. Jensen

APPENDIX C

STATE OF CALIFORNIA

OFFICE OF LEGISLATIVE COUNSEL

3021 STATE CAPITOL, SACRAMENTO 95814
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Sacramento, California
January 17, 1967

HONORABLE RICHARD J. DOLWIG
Senate Chamber

County Superintendents of Schools—No. 8335

Dear Senator Dolwig:

You have asked that we review the opinion prepared for you in January 1966, under our Request No. 1978, relating to the coordinative functions of the offices of the county superintendents of schools with respect to federally assisted educational programs in which local school districts participate. You direct our attention in these respects particularly to the question of whether any further legislation is required to authorize such coordinative operations, if it is presumed the coordinative services will not be directed to controlling the programs, but will be only for utilization of the districts on a voluntary consultative basis.

The prior opinion was directed to testimony given before the Senate Fact Finding Committee on Education at a 1965 hearing by a representative of the County Superintendents' Association. According to a copy of the transcript of his testimony submitted to us, he testified, in effect, that while the present California statutory law governing the coordinative functions was broad, there was some doubt whether authorizations afforded by California law were broad enough to extend to particular federal programs. He also recommended that "districts be required to submit applications through counties and to demonstrate that project proposals have been cooperatively planned and will be operated cooperatively with the aid of specialists, support for which should be provided."

We concluded that additional legislation would be advisable if it is desired to clearly ensure that county superintendents have coordinative authority with respect to all of the many school and education programs for which federal assistance is afforded to state agencies and school districts under the numerous federal statutes governing the same.

It is true that the existing statutory law governing the coordinative operations of the offices of the county superintendents of schools generally does not contemplate affirmative control and direction of programs maintained by school districts, but directs that particular services be made available in such a way as to promote uniformity and order, and provide assistance to districts unable to provide the services themselves (see, for example, Ed. C., Secs. 8501 et seq.). Whether any particular element of the coordinative function should be exercised by way of

direct control and supervision, such as appears to be suggested in the testimony quoted above, is a matter of policy to be resolved by the Legislature.

We have prepared and enclose the draft of a bill affording general authority to county superintendents to provide consultative and coordinative services to school districts in connection with all educational programs concerning which federal law may be controlling and for which federal financial assistance may be afforded. We have framed the proposed legislation to authorize the service to be provided upon request, rather than by way of direct affirmative control and direction of programs.

Very truly yours,

George H. Murphy
Legislative Counsel

By
Ernest H. Kunzi
Deputy Legislative Counsel

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Report of the

SENATE FACT FINDING COMMITTEE ON EDUCATION

to the

LEGISLATURE 1967 GENERAL SESSION

CALIFORNIA EDUCATORS:

Their Preparation, Assignment, and Compensation

MEMBERS OF THE COMMITTEE

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SENATE

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1967

HON. ROBERT H. FINCH
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate

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PART I

INTRODUCTION

Need for a Data Base. Educational decisions by the California Legislature, by public agencies, by professional organizations, and by citizen groups, require a general knowledge of the conditions of education in the state. Decisions on teacher recruitment can only be intelligently made when the numbers of teachers at each level and in each subject field are known. The effects of personnel policies, salary levels, and other conditions on the retention, promotion, and redistribution of teaching and administrative personnel can only be guessed at in the absence of specific figures for the numbers, locations, and assignments of teachers with specific known amounts of training, experience, and other characteristics. If public decisions are to be made on the basis of knowledge and not guesses, a data base is essential.

Efforts to Secure a Data Base. Although perhaps incomplete, data have been secured for students, district finances, school facilities, and some other dimensions of education in California. However, data on the teaching, special services, and administrative staffs of California schools have never been more than approximately secured. The size and complexity of the state have been the principal reasons for this lack. The distribution of requests for information to more than five thousand schools through more than one thousand school districts has been a formidable obstacle. Also, the magnitude of the job of tabulating responses from more than one hundred thousand individuals has been a major barrier. While general summary data have been available from official surveys of the State Department of Education and from comprehensive studies made by nongovernmental organizations, this has generally come through school districts. It has been necessary to use the data as summarized by the local agencies; precise information on individuals has been lacking. This has meant that, when a given summarization of data did not meet a need, a new survey had to be made, there being no way to reformulate and resummarize the original facts upon which previous summaries were made. Not only have the answers to new questions been slow and expensive to obtain, but the various summaries have been based on differing conceptions of how to organize data so that no comparisons between the different figures have been possible. While discrepancies have not always been great enough to be embarrassing, misunderstandings and misconceptions as to the meaning of reported data have occurred.

Requirements for a Useful Data Base. Because facts about staffs of California schools must be used in evaluating and deciding many different policy matters, data about them must be capable of being combined in many different ways. This means that a useful data base must be composed of fundamental bits of information which are matters of public record which can and should be obtainable from every certificated person employed in the educational system of the state. Secondly, the California educational scene changes rapidly and many decisions are made because of the effects, or supposed effects, of previous decisions. Hence, a useful data base must be composed of information recently obtained and frequently brought up to date. Furthermore, individuals must be identified so that changes in status and location can be followed as they occur.

Proposals for Creating a Data Base. Probably the first attempt to secure a complete set of data on California teachers was made in 1950. The "Survey of the Teacher's Work Week" asked for information in excess of that required for a personnel data base, but basic data were also collected. However, the effort of tabulating information on more than 100,000 teachers proved more than could be handled by existing resources in the State Department of Education. As a result, summaries of the data obtained had to be made over a period of years. The last published report of the series was issued five years after the survey was made. The study was useful, but its value was severely limited by this time delay.

Perhaps the most valuable result of the study was the evidence it gave as to the procedures and resources needed to create and maintain a data base for certificated personnel in the California public school system. It is probable that, at the time it was done, even a massive increase in staff involved in data processing in the State Department of Education could not have coped with the problems involved in tracing individual changes in status and location, changes which are vital to supply and demand problems. However, the costs of processing such massive amounts of data even for summarizing the static state of affairs would have been very large.

Thus the proposals for comprehensive data collection made by educational researchers and groups interested in educational research, such as the California Advisory Council on Educational Research, in the late forties, were considered to be impractical. But they were not forgotten, since the need remained, and the development of second and third generation computers in the early sixties led to a revival of interest. The chief bottleneck continued to be the cost and slowness of entering data into punched cards for use in electronic data processing equipment. With the development of optical scanning techniques it began to appear that this final difficulty might be overcome.

Beginning about 1964 the Bureau of Education Research of the State Department of Education, and particularly Dr. Peter J. Tashnovian, began work on the development of a report form for certificated personnel which could be used to enter information into a data processing system through optical scanning. Many problems presented themselves and the bureau sought advice from many sources, including the Research Department of the California Teachers Association.

Probably the most difficult problem was the lack of an accepted system for identifying classes taught in California schools. Such a "course coding system" could also be tied in with a procedure for identifying the subject matter of college work taken by teachers for certification and for advancement. Work on such a system was undertaken in cooperation with federally financed projects on integrated data processing and with professional organizations.

Another difficult problem was that of devising an identifying mark to enable individuals to be followed from one survey period to another. This was resolved when federal tax regulations required every person to secure a social security number or its equivalent.

The most serious handicap of all was, of course, the lack of budgetary provisions for the development of an actual document for use in an existing scanner, and for a field trial.

PART II

SENATE FACT FINDING COMMITTEE PROJECT

Origin of Project. In order to discharge its responsibility to the 1967 Legislature, the Senate Fact Finding Committee on Education had need for a comprehensive data base on certificated personnel in the state. It was the opinion of the committee that the data that could be obtained by even an experimental use of the proposed optical scanning techniques would be of great value to the Legislature. The State Department of Education, California Association of School Administrators, California Association of Secondary School Administrators, California Elementary School Administrators Association, California Federation of Teachers, and California Teachers Association, were requested to cooperate in undertaking such a project.

The Bureau of Education Research made available its prototype form for a document that could be scanned; the administrative groups agreed to encourage their membership to cooperate in distributing forms and securing responses from certificated employees in their schools and districts; the two teacher associations agreed to encourage their members to complete and submit forms when requested; and the California Teachers Association agreed to assign its research department to develop an experimental scanner form, to arrange for distributing it to certificated employees in the state, to process the returns, and to prepare a summary report. Direct costs to the department were to be jointly borne by the association and the Fact Finding Committee.

Preparation of Data Form. This study was made possible by the cooperation of the Regional Center for Automated Processing (RECAP) and the Santa Clara County government data processing center. This organization leased and installed a Digitek in December, 1966. Knowing that this was to occur, the director of RECAP offered the use of the machine for tabulation of the returns from the proposed Senate Fact Finding Committee survey.

Before embarking on the survey, numerous consultations were held with representatives of the Digitek Corporation, the administrators who would have to distribute and return forms, and the staff of the Fact Finding Committee. It was determined that the experimental form would have to be confined to one side of the paper in the interests of saving costs and time. It was also decided that some condensations of categories of data would be necessary, although more detail would be desirable in later forms if such a report were to become a regular requirement for certificated personnel. The most important instance of such condensation was in the case of subjects of teacher preparation majors and of classes taught, necessitated by the fact that a uniform course coding system had not yet been arrived at for the state.

A preliminary mimeographed form was prepared early in October. It was accompanied by a detailed mimeographed set of instructions for filling it out. These forms were tried out in schools at each level with the cooperation of selected school districts and the Administrative Analyst for the Fact Finding Committee. After some revisions they were presented to county superintendents and the superintendents of

the 20 largest districts in the state, or their representatives. This was done at a meeting held in the Capitol in Sacramento on November 1, 1966. Some suggestions for change could not be implemented because of the restrictions on size of forms and of the absence of a course coding scheme which were mentioned above. However, most requests for modification were incorporated into the final forms.

Scanning forms were printed by the Digitek Corporation in their plant at Fairless Hills, Pennsylvania, in November. Instruction sheets were printed by the Diamond National Corporation of San Francisco. This company also inserted a scanning form in each of the folded instruction sheets and mailed or expressed forms to the 58 counties and 20 largest school districts of the state.

Distribution of Forms. Forms were shipped to county and district offices beginning November 21, 1966. Shipping was completed December 9, 1966. The number of forms sent was based on a report from the State Teachers' Retirement System for May 1966. Although this report included a number of part-time and substitute employees who were not to be included in the survey, it was recognized that growth, wastage, and loss might well require that more forms be sent than called for by this report. Hence, the number for each district was increased by 20 percent. Because of the existence of local retirement systems, special inquiries were sent to San Francisco and Los Angeles and the numbers for these districts adjusted accordingly.

Forms for the 20 largest districts in the state were sent directly to the districts. Forms for other districts of 100 or more teachers for 1965–1966 were packaged separately and then combined, for each county, with forms for districts of smaller size. The total package was then sent to the appropriate county school office for distribution to the districts in the county. While districts were not required to follow any specific procedure for distribution, it was expected that most would send forms to individual schools or offices where they would be completed.

Letters of explanation and instruction were sent to all county and district superintendents on November 14, 1966. Letters to school principals were sent out on November 16, 1966. These letters not only explained the procedure for distribution and return of the forms, but also alerted the districts and schools as to two items of information employees would need to complete the forms. These were social security number and school and district code numbers. These latter were furnished to districts through county offices, a special preprint of the 1966–1967 administrative directory being mailed out to each county office by the Bureau of Education Research in November 1966.

Completion of Forms. The completion of forms was generally carried out at the local level on the basis of the instructions given with the forms and in the preliminary letters to superintendents and principals. However, inquiries were received both by mail and by telephone in the offices of the Senate Fact Finding Committee and the CTA research department. An information post was manned in the committee office in Sacramento on December 2 and 9, 1966. The operation of this post on these two days was announced in the letters of instruction and some telephone inquiries were received. It is interesting to

note that the committee received only 23 letters of concern regarding the survey. (See Appendix A.)

Although a number of unusable forms were returned, and a small percentage of blank or unusable responses were reported to each question on the forms that were scanned, the overall response was excellent. The nonusable and blank returns are discussed in more detail in the section on findings. It can be said here, however, that most poor data arose from unfamiliarity with the form and the purposes of the survey. Cooperation was generally excellent and there is strong indication that nearly perfect data could be obtained if the survey were to be repeated on a regular basis. The chief problem appeared to be the request for the employee's social security number. Since returns were supposed to be anonymous, this could have no valid use unless the study were to be repeated in the future. Most realized that such a repetition was anticipated, but some either did not or chose to disbelieve. However, even on this item more than 90 percent of the forms were properly completed.

Return of Forms. The 20 largest school districts were requested to return forms directly. The remainder were directed to return them to their county offices which then forwarded the combined returns for the county. Forms were sent to RECAP, Santa Clara County School Department. Mailing labels were furnished to county offices and the large districts. Most returns were sent in as directed. Forms were required to be in by January 16, 1967, in order to be assured of being included in the returns for the project. Returns were generally prompt, although approximately 250 were received too late for processing. This constituted about 0.01 percent of the forms sent in. A few forms were sent in directly by employees. Where they contained school codes they were, of course, included with the returns received through normal channels.

Cooperation was generally excellent and the staff of the Fact Finding Committee was required to remind only a few superintendents of the need to send in returns from missing districts. Some of the larger counties and districts were put to considerable expense for express and postage and for clerical services.

Data Processing. Forms were checked in by technicians employed specially for the survey. Each form was checked to see that it could be processed by the scanner. Gross errors in marking were corrected where possible. Forms were assembled in batches which were numbered. The process of each batch through the scanner was carefully logged. Forms were then held in their batches until tapes produced by the scanner had been inspected and found to contain usable data. In some cases batches were rerun in order to obtain better tapes.

Tapes produced by the Digitek 100 scanner were transported to Redwood City where the data were converted for use on a Honeywell 200. The converted data were then compiled for this report.

PART III

SUMMARY OF FINDINGS

Useful Returns. More than 190,000 returns were received. Of these approximately 250 were received too late for inclusion in the summary. The remainder, about 190,000, were submitted to processing on the Digitek 100 scanner at the Santa Clara County government data processing center. Some forms proved to be unusable in the scanner due to mutilation; while others were damaged in process due to having been stapled together or had other attachments which were not detected in the preliminary examination conducted by technicians prior to scanning. A total of 189,868 forms were scanned, of which 189,748 gave tabulatable results.

Forms were requested from regular certificated employees of districts and county offices who served half time or more on December 1, 1966. Temporary and substitute employees were excluded, as were regular employees whose total employment was less than half time. While exact figures for the total number of staff eligible to be included in the survey are not known, spot checks indicate that the returns constituted well in excess of 95 percent coverage of the population involved in the study.

Certain items were mutually exclusive. For example, an individual responding to item 20, "Self-contained Class Enrollment," should not have responded to item 24, "Departmentalized Classes." Most items, however, should have been answered by all participants. In most cases this was done. Blank responses varied from 2.1 percent for item 12, "Years of Service in California," to 4.8 percent for item 4, "Sex." Item 2, "Social Security Number," was a special case. Although blanks amounted only to 3.6 percent, zero-filled responses constituted 4.2 percent, giving a total of 7.8 percent of the returns which did not contain a usable social security number.

Allowing for nonresponses to the entire survey, late returns, unusable documents, and blank responses to items, it may be concluded that the data found for each item represents approximately 90 percent of the regular certificated employees of the California public school system. An exception is item on social security number which was answered appropriately by between 85 and 90 percent.

Age. Table I shows the distribution of responses by age. Figures and percentages are for those who answered the item properly. Unusable and blank responses for this item amounted to 2.1 percent. While the 20 responses indicating an age over 89 years may represent mistaken entries, it is not impossible that these are actual cases. Other figures would seem to be reasonably in accord with known conditions of teacher turnover and staff growth.

Sex. A total of 71,221 respondents were reported as male and 107,142 reported as female. This gives a sex distribution for certificated staff of 39.9 percent male and 60.1 percent female.

Positions. Full-time employment was reported by 174,750 respondents. It is probable that most of the 5,480 blank responses also represent the normal situation of full-time employment. Permanent status was

TABLE I—AGE

Age range	Respondents	
	Number	Percent
Less than 21 years	7,361	4.0
21–25	24,032	12.9
26–30	26,316	14.2
31–35	24,659	13.3
36–40	25,508	13.7
41–45	24,412	13.1
46–50	19,876	10.7
51–55	15,759	8.5
56–60	12,022	6.5
61–65	5,109	2.7
66–89	715	0.4
Over 89	20	0.0
Totals	185,789	100.0

TABLE II—MAJOR ASSIGNMENT

Assignments	Respondents	
	Number	Percent
Regular class teacher	147,102	79.4
Central office administration	4,990	2.7
Individual school administration	9,064	4.9
Special services personnel	9,173	4.9
Special teachers	10,782	5.8
Other	4,245	2.3
Totals	185,356	100.0

reported by 107,383, or 58.4 percent of those responding. Probationary status was reported by 70,572, or 38.4 percent. The 2,451 who reported their status as substitute presumably were long-term substitutes serving as regular employees in all respects except employment status. These formed 1.3 percent of the total.

Respondents were asked to report their status in their present major assignment. The 1,900 who reported their status as temporary probably represent persons on leave from regular permanent or probationary positions, and may include persons affected by assignment changes due to federal and other special programs.

Service on extended contract basis was reported by only 1,504 individuals, or 0.8 percent. These would appear to be mostly administrators although some teachers in districts under 250 average daily attendance may be included.

Assignments. Table II shows how respondents reported their major assignments. There were 4,249 blank responses not included in the figures on which the table is based. Table III shows the distribution

TABLE III—LEVEL OF ASSIGNMENT

Level	Respondents	
	Number	Percent
Preschool	3,547	1.9
Kindergarten	7,122	3.9
Elementary	81,563	44.6
Junior high	29,606	16.2
Senior high	42,145	23.0
Junior and senior high	5,316	2.9
Junior college	9,727	5.3
Central office	4,001	2.2
Totals	183,027	100.0

of respondents by level of major assignment. "Central office" refers to assignments with general responsibilities covering more than one grade level. Examples would be superintendent in a unified district or general supervisor in a county school department. Blank responses not included in the table totaled 6,580.

Most assignments were full time. This was reported as the case by 166,653 respondents, or 93.7 percent of those answering the item. In the case of assignments that were exactly half time, respondents were asked to report the one requiring the more advanced credential. Such half-time assignments were reported by 1,762, or 1.0 percent, of the respondents. Major assignments occupying from half to three-quarters of their total work time were reported by 3,565, or 2.0 percent. Major assignments that were coupled with minor auxiliary assignments were reported by 5,130, 2.9 percent, of the respondents. (In these cases the major assignments constituted more than three-fourths of the total assignment.) Multiple assignments such that no one of them required half time or more were reported by 786 respondents, or 0.4 percent of those answering the item.

District. Table IV shows the distribution of respondents according to the type of district in which employed. There were 6,648 blank or unusable responses to this item. This was 3.5 percent of the returns. Many of these could probably be classified by making use of the district part of the school code reported in item 1.

Credential. Table V shows the distribution of respondents according to certain general classifications of credentials. These were the credentials under which they were serving in the major assignments reported. There were 6,051 blank responses, or 3.2 percent of the returns.

Of the credentials reported, 160,622, or 89.1 percent were reported as being regular. Provisional credentials accounted for 6,511, or 3.6 percent. Credentials issued on partial fulfillment of requirements were reported as being used by 13,038, or 7.2 percent.

TABLE IV—TYPE OF DISTRICT

District type	Respondents	
	Number	Percent
Elementary	45,421	24.8
Common administration	6,571	3.6
High school	20,313	11.1
Unified	100,432	54.9
Junior college	8,427	4.6
County office	1,871	1.0
Totals	183,035	100.0

TABLE V—TYPE OF CREDENTIAL

Credential type	Number	Percent
Regular	160,622	89.1
Provisional	6,511	3.6
Partial fulfillment	13,038	7.2
Totals	180,171	100.0

Experience. Respondents were asked to report their years of service in three categories. These were service in California, service outside California, and service in their present positions. While instructions specifically requested that the 1966–1967 school year be counted in calculating service totals, zero-filled and blank responses indicated some confusion on this matter. Therefore, it is probable that the number reported as having only one year of service—that is, as being beginners in 1966–1967—is a minimum. There were 6,752 zero-filled responses. If these are considered to be due to beginning teachers misreading the instructions, the number of respondents with one year service (including 1966–1967) would be increased almost by half. This would make them total slightly over 10 percent of the respondents rather than the 7.7 percent reported in Table VI, which shows the distribution of respondents according to years of service in California.

Further evidence of confusion over the directions is given by the high number of respondents reporting more than 30 years of service. These figures do not agree with the age distribution of teachers reported in Table I. A spot check of returns indicates that the discrepancy may be due, at least in part, to respondents reversing figures in entering years of experience. If so, the numbers reported for those with three to five years of experience are probably too low. The similarities of the discrepancies in Table VI to those in Tables VII and VIII, strengthen this probability.

Table VII shows the distribution of respondents according to years of service reported outside of California. In compiling this table, blanks

TABLE VI—YEARS OF SERVICE IN CALIFORNIA

Years	Respondents	
	Number	Percent
1	13,874	7.7
2	13,101	7.3
3	12,019	6.7
4	10,414	5.8
5	9,237	5.2
6–10	43,014	23.9
11–15	29,149	16.2
16–20	19,621	10.9
21–25	7,618	4.2
26–30	6,203	3.5
Over 30	15,350	8.6
Totals	179,600	100.0

TABLE VII—YEARS OF SERVICE OUTSIDE OF CALIFORNIA

Years	Respondents	
	Number	Percent
None	123,121	64.9
1	8,033	4.2
2	7,597	4.0
3	5,926	3.1
4	4,457	2.4
5	3,962	2.1
6–10	13,484	7.1
11–15	5,676	3.0
16–20	4,574	2.4
21–25	1,320	0.7
26–30	2,285	1.2
Over 30	9,223	4.9
Totals	189,748	100.0

and zero-filled responses were assumed to represent persons with no such experience.

Table VIII shows the distribution of respondents according to years of service in their present districts or county offices, including predecessor districts where reorganization has occurred. The same problems with blank and zero-filled responses described in connection with the report of service in California apply here also. It is, therefore, possible that the number of individuals serving their first year in their present positions should be increased about half.

College Preparation. Because of space limitations on the report form, it was necessary to limit inquiry as to the source of degrees to the question of whether they were obtained from institutions within

TABLE VIII—YEARS OF SERVICE IN PRESENT POSITION

Years service	Respondents	
	Number	Percent
1	24,683	14.3
2	17,398	10.2
3	13,994	8.2
4	10,782	6.3
5	8,978	5.3
6–10	38,751	22.7
11–15	21,414	12.5
16–20	14,292	8.4
21–25	4,537	2.7
26–30	4,415	2.6
Over 30	11,550	6.8
Totals	170,794	100.0

TABLE IX

HIGHEST DEGREE HELD

Degree	Respondents	
	Number	Percent
None	3,905	2.1
Bachelors	119,594	65.7
Masters	53,561	29.4
Doctorate	5,038	2.8

or outside California. Bachelors' degrees were reported as having been obtained in California by 108,382 persons, or 60.3 percent of those answering.

Graduate work was reported as having been taken entirely in California institutions by 67.7 percent of those responding. Those taking all graduate work outside California constituted 7.7 percent of the respondents; while 24.7 percent took graduate work both within and without the state. Graduate work of some type was reported as having been taken by 153,906 respondents, or nearly 82 percent of those included in the survey.

Table IX shows the distribution of respondents according to the highest degree reported as being held. Of course many of those holding these degrees have additional college work not reflected by the level of the degree. Table X shows the distribution of respondents according to the number of units reported as being earned past the highest degree obtained.

The distribution of respondents according to the undergraduate majors reported, is given in Table XI; while Table XII shows the distribution according to the major for the highest degree obtained, which thus includes graduate as well as undergraduate majors. The classification of majors is based on a synthesis of course offerings in California high schools, colleges and universities.

Class Size. A total of 61,204 teachers responded to the item calling for size of self-contained classes. These were defined as classes, regardless of grade level, in which the respondent was responsible for the entire educational program. Use of specialists for music, physical

TABLE X—UNITS PAST HIGHEST DEGREE

Units	Respondents	
	Number	Percent
None	19,657	10.6
1–10	29,283	15.8
11–20	29,945	16.2
21–30	26,166	14.1
31–40	24,461	13.2
41–50	20,116	10.9
51–60	13,818	7.5
61–70	8,571	4.6
71–80	6,223	3.4
81–90	3,383	1.8
91–99	3,559	1.9
Totals	185,182	100.0

TABLE XI—UNDERGRADUATE MAJORS

Major	Respondents	
	Number	Percent
Education	60,910	34.1
Natural science	13,647	7.7
Social sciences	28,277	15.8
Humanities	19,466	10.9
Fine arts	11,788	6.6
Foreign languages	6,335	3.6
Mathematics	4,725	2.7
Physical education	12,387	6.9
Home economics	4,365	2.4
Industrial arts	5,268	3.0
Business administration and business education	5,933	3.3
Library science	261	0.1
Agriculture	854	0.5
Engineering	619	0.3
Other	3,761	2.1
Totals	178,596	100.0

TABLE XII—MAJOR FOR HIGHEST DEGREE

Major	Respondents	
	Number	Percent
Education	79,643	46.1
Natural science	10,466	6.0
Social sciences	20,127	11.7
Humanities	15,003	8.7
Fine arts	10,025	5.8
Foreign languages	4,805	2.8
Mathematics	3,372	2.0
Physical education	9,634	5.6
Home economics	3,718	2.1
Industrial arts	4,266	2.5
Business administration and business education	4,622	2.7
Library science	1,021	0.6
Agriculture	516	0.3
Engineering	372	0.2
Other	5,079	2.9
Totals	172,649	100.0

TABLE XIII—SELF-CONTAINED CLASS SIZE

Class size range	Number reported	Percent of total
1–10	3,000	4.9
11–20	4,516	7.4
21–25	6,364	10.4
26–30	21,606	35.4
31–35	21,418	35.1
36–40	3,502	5.8
41–45	120	0.2
46–50	127	0.2
Over 50	351	0.6
Totals	61,004	100.0

education, or other specific parts of the class work was permitted, but formal departmentalization was excluded. Table XIII shows the number of classes reported in each size range indicated. The percentage distribution of classes according to size range is also given.

Teachers working in departmentalized programs were also asked to report on class sizes. In doing so they were asked to indicate the subject area of the classes using the same classification system as that employed in reporting undergraduate and graduate majors. Table XIV shows the number of classes reported in each subject area, the percent that is of all departmentalized classes reported, and the average class size for each subject area.

Salaries. Respondents were asked to report their annual salaries exclusive of extra pay for extra services. There appeared to be some confusion over this item in districts where monthly rather than annual

salaries are emphasized. However, a total of 177,708 usable responses were received. On the basis of this return an annual salary for all certificated personnel was calculated. This turned out to be $9,120, which is in line with findings of state department and California Teachers Association salary survey results.

TABLE XIV—DEPARTMENTALIZED CLASS SIZES

Subject area	Classes reported		Average size
	Number	Percent of total	
Education	2,963	0.8	24.08
Natural science	32,557	8.8	28.93
Social sciences	48,743	13.2	30.38
Humanities	69,644	18.8	27.33
Fine arts	29,024	7.8	29.28
Foreign languages	23,043	6.2	27.64
Mathematics	42,078	11.3	29.00
Physical education	41,175	11.1	38.41
Home economics	13,439	3.6	23.42
Industrial arts	21,210	5.7	23.20
Business administration and business education	18,437	5.0	29.17
Library science	3,176	0.9	18.77
Agriculture	1,649	0.4	21.82
Engineering	805	0.2	20.19
Other	23,126	6.2	24.47
Totals	371,069	100.0	-----

PART IV

CONCLUSIONS AND RECOMMENDATIONS

Feasibility of Annual Surveys. In the past the very large number of individuals involved, the complexity of local organization, and the interests of local autonomy in educational matters, have all combined to make a rapidly conducted, comprehensive survey of certificated personnel in California an impossibility. Some problems have been the difficulty of establishing uniform standards for reporting, arranging for distribution and collection of forms, and slow processing of resulting documents. Although questions remain to be answered in the first area, the present survey has shown that their impact can be minimized, and that answers in the other areas are now available.

The creation of a report form, the development of instructions both for completing it and for its distribution and collection, and the securing of complete cooperation from districts and county school departments in its distribution and collection, were noteworthy accomplishments in view of the limited time allowed and the lack of previous experience. There can be no question that, if use is made of the know-how developed in this study, future surveys can be accomplished expeditiously and with markedly increased completeness and accuracy. Many of the shortcomings of the present survey point directly toward procedural modifications which will eliminate them. Certain major problems, such as the interpretation of some definitions and the provisions of social security numbers and school codes, will be entirely removed if personnel and local administrations come to expect such a survey on an annual, or at least biennial, basis.

The successful development and use of an optical scanning technique for recording data has demonstrated the possibility of tabulating data and preparing reports within realistic time and budget limitations. It is true that the practicality of the present study depended heavily upon the availability of the staff services of the Research Department of the California Teachers Association. The lessons of this project can be readily communicated to state agencies and, with frequent—preferably annual—repetition, and with modifications based on such experience, there is no question that a state agency can rapidly develop the necessary techniques for accurate and efficient collection of comprehensive data. Obviously, surveys made by an official agency, and probably made a legal requirement, will result in maximal percentages of returns and accuracy.

While it is possible that this type of survey can be conducted on an ad hoc basis, either by private organizations or by special action of the Legislature, it is to be hoped that the experience gained by this present survey will not be wasted. Such experience was gained not only by the CTA Research Department staff in the conduct of the survey, but also by the Senate Fact Finding Committee staff and, most importantly, by the administrators who administered the distribution and collection of the instruments, and by the personnel who filled them out. Followups with improved forms should be conducted before the memory of this one fades.

Further Analysis of Findings. This survey was an experimental one. It was, therefore, impossible to tell ahead of time just which of the findings would require detailed analysis, and just where difficulties and uncertainties would occur in the collection and interpretation of data. In the interests of time, and to permit establishment of priorities for expenditure of funds for the conduct of statistical studies, this report was prepared with a minimum of detailed analysis. Even a general consideration of the findings indicates that several parts of the data would warrant more comprehensive treatment. Some obvious possibilities are given herewith.

1. Analysis of age and experience variations among sex, levels of assignment, types and locations of districts, and level of preparation.
2. Location, by districts and schools, of those substitutes who were apparently on such a regular basis as to have been included in the directions for completing the survey forms.
3. Location, by districts and schools, of personnel holding provisional and partial fulfillment credentials. The relationships of the distribution of such personnel to salary levels, district size, and other factors.
4. Relationship of levels of preparation to salaries, district type, district size, location, and other variables.
5. Distribution of class sizes by levels, location and district variables such as size.
6. Class size distributions for subject areas by actual enrollments reported.

A number of these analyses have already been requested by the staff of the factfinding committee. They can all be made from the data on hand. However, the cost of programing and computer time will require that special planning be involved to determine financial feasibility and priorities to be given within budgetary limitations. In this regard, and on the basis of the findings set forth in this report, the Senate Fact Finding Committee on Education strongly recommends that the Legislature grant to it the necessary authority, funds, and personnel to conduct a similar survey annually and to undertake comprehensive analysis of the findings herein.

AVAILABILITY OF DATA

The data secured by scanning the response documents have been recorded on magnetic tapes. These tapes can be duplicated. Since the data are all matters of public record, there would appear to be no bar to the duplication of the tapes for any responsible organization desiring to conduct analyses for its own purposes and at its own expense. Costs for duplicating tapes will be nominal compared to the costs of conducting the study, and unnecessary duplication of requests to local agencies for this information will be avoided.

APPENDIX A

The following categories represent areas of concern expressed by teachers in connection with the survey of all certificated school personnel in the State of California. They represent 23 letters directed to the Senate Fact Finding Committee on Education office. The total number of comments or inquiries (38) allows for those letters voicing more than one concern.

	Number of comments and inquiries
Inclusion of social security number	14
Inclusion of school code number	4
Voluntary participation questioned	1
Purpose of survey data questioned	3
California Teachers Association copyright	3
Recommendation regarding mechanics of distributing survey forms	1
Unable to fill out questionnaire (too time consuming)	1
Validity of survey questioned because of interpretation of certain questions	1
Inclusion of additional questions requested	6
General—1 Librarians—1 Junior college class size—1 Time involved in counseling assignments—1 Preschool personnel—1 Mandated foreign language requirement—1	
General commendation (not including that of superintendents)	4

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REPORT OF THE

SENATE FACT FINDING COMMITTEE ON PUBLIC HEALTH AND SAFETY

MEMBERS OF THE COMMITTEE

SENATOR WALTER W. STIERN, *Chairman*

Senator Jack Schrade, *Vice Chairman*
Senator Frank S. Petersen (retired)
Senator Aaron W. Quick
Senator Alvin C. Weingand

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THE SUPPLY OF DOGS AND CATS USED IN LABORATORIES FOR TEACHING AND RESEARCH

January 1967

Published by the

SENATE
OF THE STATE OF CALIFORNIA

ROBERT H. FINCH
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate

LETTER OF TRANSMITTAL

January 4, 1967

HON. ROBERT H. FINCH, *President*
and Members of the Senate

Gentlemen:

The Senate Fact Finding Committee on Public Health and Safety herewith submits its report on the supply of dogs and cats used in laboratories for teaching and research.

Respectfully submitted,*

Walter W. Stiern, *Chairman*
Jack Schrade, *Vice Chairman*
Aaron W. Quick
Alvin C. Weingand

* Senator Frank S. Petersen took no part in the preparation of this report.

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CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

Medical schools, veterinary schools, teaching and research hospitals, nonprofit research laboratories, and commercial laboratories are using about 20,000 dogs and 10,000 cats annually in California, and soon the number of animals used will more than double. These laboratories told the committee that the present supply of dogs and cats is not as reliable, convenient, plentiful, and cheap as it might be; they argued that a reliable, convenient, plentiful, and cheap supply of animals exists in the public pounds of California, and that, since the animals are presently being destroyed, no harm and many benefits would result if the animals were transferred to the laboratories instead.

(Some witnesses at the committee hearing argued that the number of animals suitable for laboratory use in pounds is too small to be significant, but counsel's report shows that the pounds are destroying many animals and that the laboratories are using this kind of animal.)

The laboratories' proposal is not that impounded, unclaimed dogs and cats that otherwise would be destroyed should be transferred to laboratories. Several jurisdictions in the state are presently doing that. The laboratories' proposal is that the state should enact a law to require *all* publicly supported pounds to transfer dogs and cats to the laboratories. Publicly supported pounds are of two kinds: (1) pounds operated by cities and counties and (2) pounds operated by humane societies and supported in large part by cities and counties. The state law would apply to both kinds of pounds and would, among other things, do the following:

(1) Reverse existing state policy, enacted into law in Health and Safety Code Section 1670, authorizing cities and counties to dispose of animals from pounds as they see fit;

(2) Repeal the ordinances, and the policies therein, of a number of cities and counties prohibiting the transfer of impounded animals to laboratories;

(3) Reverse the policies of a number of cities and counties, instituted by administrative decision, against the transfer of impounded animals to laboratories; and

(4) Require cities and counties operating pounds in cooperation with humane societies to reorganize their practices with respect to animal control.

Yet another consequence of enacting a statewide pound release law would be to increase anxiety among pet owners that a pet might be transferred from a pound to a laboratory; no safeguards written into a statute could prevent this.

The case for enacting a statewide pound release law would be much stronger if alternatives did not exist, but they do exist and they are attractive from social, economic, and scientific points of view.

One alternative is to use, in all chronic experiments, animals bred for laboratory use. The scientific benefits of using these animals arise from the reduction of variables and the consequent increase in precision and reliability of results. The economic benefits of using these animals are associated with the scientific benefits: improvement in scientific results lowers the cost of experimentation. Moreover, using animals bred for laboratory use prevents frustration of experiments, which may involve costly delays in laboratory work, through the discovery of diseases not apparent when the animals were purchased. Finally, since the variables are reduced, fewer animals are required. From the social point of view, the use of these animals in chronic experiments relieves laboratories of the odium attached the possibility that they are using pets.

Apparently without dissent, the scientific community accepts the wisdom of this alternative. What is needed is its energetic organization. The animals can be raised by the laboratories, by a central government agency, or by commercial breeders.

The acceptance of this alternative will increase the number of animals now available from pounds and dealers for use in acute experiments.

Another alternative is to use animals other than dogs and cats in laboratories. The medical school of the University of Oregon has successfully used goats; the Los Angeles County Veterinarian is exploring the practicability of using swine; and the National Institutes of Health has found that the use of farm animals other than dogs and cats is desirable and is using them in significant numbers.

Whether the use of these other animals is practical for acute as well as for chronic experiments is not yet clear, but that fact is perhaps a good reason for not taking hasty action to change a long-standing state policy and enacting a law that would unquestionably disrupt animal control work in many cities and counties.

A third alternative is for the laboratories, working within the context of present state law and policy, to persuade cities and counties to transfer impounded, unclaimed animals to them. In communities where animal control work is not intimately tied to the local humane society, this alternative may prove feasible. If the laboratories reply that they cannot persuade local communities to accept the proposal, then it is ill-advised for the state, by preempting the field, to force the communities to do what they otherwise would not.

Persuasive evidence exists that this alternative is viable. The laboratories in the past have been successful in getting the consent of the electorate and its representatives to accept the transfer of animals from pounds to laboratories. A leading representative of the humane movement, Mrs. Christine Stevens of New York, has testified before a congressional committee that the use of animals purchased from pounds in acute experiments is a good solution to the problem of supplying laboratory animals.* What humane societies object to is being forced to choose between surrendering their basic principles or surrendering their work in the community. Those are the alternatives forced on them by state preemption.

* U.S. Congress, Senate, Committee on Commerce, *Hearings, Animal Dealer Regulation,* 89th Cong., 2nd Sess., 1966, pp. 133, 156–7.

The issue of theft is not decisive. First, no evidence exists that dogs and cats are being stolen in California for laboratory use. Second, the new federal law will make the theft of dogs and cats for laboratory use virtually impossible. Third, to enact the proposed statute out of thieves' threats would be cowardly and immoral.

Nor is the issue of cost decisive. While it is easily demonstrated that the cost of animals purchased from pounds is less than the cost of animals purchased from dealers and still less than the cost of animals bred for laboratory use, the demonstration does not show what the actual economic consequences would be of state preemption of this field. What would be the cost of reorganizing the administration of the pounds in cities and counties that now contract with humane societies? What would be the cost of maintaining dogs and cats for a longer holding period than a city or county might now require? What would be the cost of building more facilities to take care of the animals required to be held longer? If a state statute required a longer holding period than five days (and it would surely do so), would not the cost of animals that the laboratories now purchase from pounds increase? These questions are unanswerable and it cannot be assumed that the total economic effect of state preemption would be a saving.

For these reasons, we have concluded that the state should retain its present policy of local control over the disposition of animals from pounds and that the state should not preempt this field and force all cities and counties to transfer to laboratories dogs and cats that otherwise would be destroyed.

Report on the Supply of Dogs and Cats Used in Laboratories for Teaching and Research, Submitted to the California Senate Fact Finding Committee on Public Health and Safety by the Committee Counsel

I. INTRODUCTION

Senate Resolution 258 of the 1965 Regular Session of the Legislature requested a study of the supply of dogs and cats used in laboratories for teaching and research.[1] The subject matter of the resolution was assigned to the Senate Fact Finding Committee on Public Health and Safety, and the committee held a one-day hearing on the resolution in Los Angeles, September 6, 1966.[1A] The chief issue discussed at the hearing was whether the state should preempt the field of disposing of dogs and cats in public pounds and require public pounds, under certain conditions, to release dogs and cats to laboratories for experimental use. At the conclusion of the hearing, the chairman asked the committee counsel to prepare this report on the subject of the hearing.

The report is based on testimony given at the September 6, 1966, hearing, replies to questionnaires, information obtained by letter and interview, and published literature.

To avoid repeating cumbersome phrases, the report uses the word "laboratories" to cover all types of professional health schools—medical, dental, veterinary, and pharmaceutical—as well as hospitals, commercial laboratories, and nonprofit research laboratories. The report uses the word "experiment" to refer to all procedures having either a research or a teaching purpose and using live dogs or cats. "Municipalities" refers to both cities and counties.

II. USES AND USERS OF LABORATORY DOGS AND CATS

Medical science and related disciplines—veterinary science and biology—use animals to study living processes so that human and animal health may be improved. Experimental animals played a significant role in the control of diabetes through the use of insulin; the control of whooping cough and poliomyelitis; the development of treatments for tuberculosis; the development of the extracorporeal pump used in heart surgery, the Blalock operation to repair defective human hearts, and intravenous therapy; the discovery of a specific protein requirement in nutrition; and the discovery of uses for tranquilizing and antispasmic drugs. Discoveries in medical science improve animal health as well as man's and benefit man as a consumer of animal products and as a pet owner.

The medical and biological uses of dogs and cats are as follows:

Teaching. Animals are used to train medical and veterinary students in basic surgical techniques.

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[1] The text of the resolution will be found in the appendix at page 49.

[1A] California Legislature, Senate, Fact Finding Committee on Public Health and Safety, *Hearings, Requiring the Release of Unclaimed, Impounded Animals for Use in Scientific Research,* Los Angeles, September 6, 1966. (Transcript.)

Research. This is a broad category and includes, for example, investigations of: psychology; physiology; nutrition; the effects of radiation; the cause, treatment, and cure of disease; the safety, efficacy, and dosage of drugs; new surgical procedures; medical apparatus; life in space; safety equipment; and reactions to stress.

Diagnosis. Animals are used in the diagnosis of certain diseases.

Production of Biologicals. Some laboratory animals are used to produce biologicals and as blood donors for priming experimental machinery used in open-heart surgery.

One survey has found that approximately 75 percent of laboratory dogs and cats are used in research and 25 percent in teaching. Less than one-tenth of 1 percent of the dogs were used in diagnosis and the production of biologicals, and no cats were used for these purposes.[2]

Dogs used in laboratories must be at least seven months old and weigh 30 pounds or more.

In California, the State Department of Public Health, pursuant to statutory authority described below, licenses and regulates laboratories using experimental animals. As of October 7, 1966, the department had approved a total of 56 laboratories to use dogs and cats: 23 laboratories to use dogs, 10 laboratories to use cats, and 23 laboratories to use both dogs and cats. Federal laboratories are exempt from state regulation, but two federal hospitals have chosen to obtain a state license. These state-licensed laboratories fall into the following categories:

Medical and veterinary schools (existing and soon to open)	8
College and university campuses	12
Hospitals	15
Private, nonprofit research institutions	8
Commercial laboratories	11
Federal hospitals	2

Geographically, these laboratories are located as follows:

Northern California, including the Sacramento Valley	21
San Joaquin Valley	3
Southern California, including the south central coastal area	32

The federal laboratories not licensed by the state consist of four hospitals and four laboratories; seven of these institutions are located in northern California and one in southern California.

III. NUMBER OF DOGS AND CATS NOW BEING USED AND TO BE USED IN 1970 BY CALIFORNIA LABORATORIES

Tables 1 and 2 show the number of dogs and cats presently being used in an annual period by state-licensed laboratories. The information in the tables is taken from the replies to a questionnaire sent to each state-licensed laboratory and from the records of the State Department of Public Health.

The 47 laboratories that returned the committee's questionnaire reported the number of animals used in a recent one-year period, but the reporting period was not the same for all the laboratories. Most of the laboratories reported the animals used either in the calendar year 1965

[2] U.S. Congress, House, Subcommittee of the Committee on Interstate and Foreign Commerce, *Hearings, Humane Treatment of Animals Used in Research,* 87th Cong., 2nd Sess., 1962, p. 160.

or in the year ending June 30, 1966; a few used a later reporting period; the most recent one was the year ending October 1, 1966. Table 1 shows the number of animals used by each kind of laboratory; Table 2 shows the use of animals in three geographical regions of the state.

Tables 1 and 2 do not show the number of animals being used in the four federal laboratories and in the four federal hospitals located in California and not licensed by the state.

Tables 3 and 4 show the number of dogs and cats to be used in the calendar year 1970 as estimated by 47 laboratories.

TABLE 1

Number of Dogs and Cats Used by State-Licensed Laboratories in a Recent One-Year Period, by Kind of Laboratory

	Dogs	*Cats*
Medical and veterinary schools	9,983	5,359
College and university campuses	220	880
Hospitals	4,696	510
Private, nonprofit research institutions	2,221	562
Commercial laboratories	858	1,669
Federal laboratories	909	393
Total	18,887	9,373

TABLE 2

Number of Dogs and Cats Used by State-Licensed Laboratories in a Recent One-Year Period, by Geographical Location of the Laboratory

	Dogs	*Cats*
Northern California, including the Sacramento Valley	8,056	3,308
San Joaquin Valley	181	43
Southern California, including the south central coastal area	10,650	6,022
Total	18,887	9,373

TABLE 3

Esimated Number of Dogs and Cats to Be Used in 47 Laboratories in California in the Calendar Year 1970, by Kind of Laboratory

	Dogs	*Cats*
Medical and veterinary schools	37,270	12,354
College and university campuses	656	1,348
Hospitals	8,115	688
Private, nonprofit research institutions	1,815	275
Commercial laboratories	324	187
Federal laboratories	1,001	631
Total	49,181	15,483

TABLE 4

Estimated Number of Dogs and Cats to Be Used in 47 Laboratories in California in the Calendar Year 1970, by Geographical Location of the Laboratory

	Dogs	*Cats*
Northern California, including the Sacramento Valley	13,396	5,414
San Joaquin Valley	160	130
Southern California, including the south central coastal area	35,625	9,939
Total	49,181	15,483

IV. SOURCES OF SUPPLY AND THE COST OF LABORATORY ANIMALS

Table 5 shows the sources of dogs and cats used in 41 of the 56 state-licensed laboratories in a one-year period. The table further shows the percent of the dogs and cats acquired from each source and the total cost and average cost of the dogs and cats acquired from each source. The total number of dogs and cats referred to in Table 5 is

TABLE 5

Sources and Cost of Dogs and Cats Used in 41 State-Licensed Laboratories in a One-Year Period

	Dogs				Cats			
	Number	Percent	Cost (dollars)	Average cost (dollars)	Number	Percent	Cost (dollars)	Average cost (dollars)
Total	17,701	100	96,756	5.47	6,853	100	16,995	2.48
Pound	11,570	65.4	48,471	4.19	4,917	71.7	8,949	1.82
California dealer	5,560	31.4	48,058	8.64	1,827	26.7	8,046	4.40
Bred	373	2.1	unknown	unknown	62	0.9	unknown	unknown
Gift	188	1.1	0.00	--	47	0.7	0.00	--
Out-of-state dealer	10	0.06	227	22.70	0	--	--	--

TABLE 6

Sources and Cost of Dogs and Cats Used in 41 State-Licensed Laboratories in a One-Year Period, by Geographical Location of the Laboratories

	Dogs				Cats			
	Number	Percent	Cost (dollars)	Average cost (dollars)	Number	Percent	Cost (dollars)	Average cost (dollars)
Northern California, including the Sacramento Valley								
Pound	3,281	42.1	19,150	5.84	1,223	42.6	4,988	4.08
California dealer	4,091	52.4	36,490	8.92	1,571	54.7	7,222	4.60
Bred	373	4.8	unknown	unknown	50	1.7	unknown	unknown
Gift	55	0.7	0.00	--	29	1.0	0.00	--
Out-of-state dealer	0	--	--	--	0	--	--	--
Total	7,800	100	55,640	7.13	2,873	100	12,210	4.25
San Joaquin Valley								
Pound	10	5.5	40	4.00	25	58.1	50	2.00
California dealer	33	18.2	198	6.00	18	41.9	72	4.00
Bred	0	--	--	--	0	--	--	--
Gift	128	70.8	0.00	--	0	--	--	--
Out-of-state dealer	10	5.5	227	22.70	0	--	--	--
Total	181	100	465	2.57	43	100	122	2.84
Southern California, including the South central coastal area								
Pound	8,279	85.2	29,281	3.54	3,669	93.2	3,911	1.07
California dealer	1,436	14.8	11,370	7.92	238	6.0	752	3.16
Bred	0	--	--	--	12	0.3	unknown	unknown
Gift	5	0.05	0.00	--	18	0.5	0.00	--
Out-of-state dealer	0	--	--	--	0	--	--	--
Total	9,720	100	40,651	4.18	3,937	100	4,663	1.18

94 percent of the dogs and 73 percent of the cats used by these 56 laboratories in a one-year period.

Table 6 gives the same information as Table 5 broken down by the geographical location of the laboratories.

Tables 5 and 6 contain no information about the sources or cost of dogs and cats being used in the four federal laboratories and in the four federal hospitals located in California and not licensed by the state.

A. Pounds

Table 5 shows that pounds have recently supplied more than 11,500 dogs and 4,900 cats to California laboratories and that this number was about 65 percent of the dogs and 71 percent of the cats used by 41 state-licensed laboratories during a one-year period.

The average cost of a dog acquired from a pound was $4.19, and the average cost of a cat acquired from a pound was $1.82.

Table 7 shows the prices charged by four counties for dogs and cats sold to laboratories. (The prices do not include sales tax.)

Table 8 shows the number of dogs and cats impounded, destroyed, and transferred to laboratories by 17 counties and 19 cities during the year ending June 30, 1966. This information was obtained from the usable replies to a questionnaire sent to the most populous 26 counties and 49 cities in California.

TABLE 7

Prices Charged for Dogs and Cats Sold to Laboratories by Public Pounds

	Dogs	*Cats*
Los Angeles City	$3.50	$1.50
Los Angeles County	5.00	2.00
Orange County	3.00	1.00
Ventura County	5.00	1.00

B. Dealers

Table 5 shows that dealers have recently supplied more than 5,500 dogs and 1,827 cats to California laboratories and that this number was about 31 percent of the dogs and 26 percent of the cats used in 41 state-licensed laboratories during a one-year period.

The cost of a dog purchased from a dealer ranges from $4.55 to $13.30, and the average cost is $8.64.

The cost of a cat purchased from a dealer ranges from $3.50 to $5.84 each, and the average cost is $4.40.

One laboratory only reported purchasing dogs from an out-of-state dealer; the purpose of doing so was to obtain dogs having a specific disease state.

The total number of dog and cat dealers in California is not known, but several exist.[3]

Dealers may obtain dogs and cats by breeding them, by purchasing culled animals from breeders, by purchasing unwanted animals from individuals, and by purchasing animals from public pounds. Two Cali-

[3] National Academy of Sciences—National Research Council, Institute of Laboratory Animal Resources, *Laboratory Animals, II. Animals for Research* (Washington: NAS-NRC Publication 1199, 1964), pp. 19, 67; letter from Orland A. Soave, D.V.M., Director, Animal Care Facility, Stanford Medical Center, to Senator Walter W. Stiern, September 8, 1966.

fornia dealers in laboratory dogs and cats informed the committee that municipal pounds are their principal source of supply.[4]

TABLE 8

Dogs and Cats Impounded, Destroyed, and Transferred to Laboratories, by 17 Counties and 19 Cities During the Year Ending June 30, 1966

County	Impounded		Destroyed		Transferred to laboratories	
	Dogs	Cats	Dogs	Cats	Dogs	Cats
Humboldt	4,244	unknown	3,079	unknown	50	25
Marin	2,212	1,122	331	920	--	--
San Francisco	8,996	15,072	5,177	14,063	--	--
Alameda	1,998	1,953	970	1,154	--	--
Contra Costa	15,385	18,664	4,901	7,842	--	--
Sacramento	10,564	5,694	7,345	5,359	200	100
Santa Cruz	2,820	5,911	2,519	4,081	--	--
Monterey	6,593	5,946	4,718	5,796	--	--
San Joaquin	2,800	1,382	1,974	1,044	524	283
Stanislaus	3,858	2,460	3,410	2,460	--	--
Fresno	20,892	unknown	17,896	unknown	--	--
Tulare	8,567	4,450	7,979	3,959	--	--
Kern	13,379	unknown	8,140	unknown	--	--
Los Angeles	68,146	55,989	50,120	52,608	1,696	71
Ventura	39,100	19,530	34,604	17,885	1,000	1,000
Orange	24,217	19,693	9,339	9,652	2,219	3,368
San Diego	6,168	3,489	4,685	3,489	--	--
City						
Alameda	738	1,500	141	1,347	--	--
Oakland	3,910	1,876	2,038	1,637	--	--
Santa Clara	924	519	135	443	--	--
Berkeley	1,013	603	427	603	--	--
San Jose	6,720	4,815	4,293	4,460	--	--
Hayward	1,673	1,578	586	1,006	--	--
Palo Alto	2,774	10,996	2,008	10,602	--	--
Stockton	4,130	2,428	1,304	1,866	674	283
Sacramento	4,759	1,172	4,185	1,076	--	--
Red Bluff	360	117	291	117	--	--
San Bernardino	unknown	unknown	7,072	5,106	unknown	54
South Gate	750	unknown	366	unknown	--	--
Santa Monica	2,156	2,132	955	1,894	--	--
Glendale	2,202	2,752	926	4,111	--	--
Riverside	12,317	12,943	8,243	11,320	--	--
Inglewood	817	unknown	362	unknown	--	--
Long Beach	9,124	10,533	4,260	9,776	--	--
San Diego	7,838	4,590	5,319	4,554	--	--
Los Angeles	53,112	45,475	32,352	40,817	3,012	745
Total	355,256	265,384	242,450	231,047	9,375	5,929

C. Breeding

Table 5 shows that 41 state-licensed laboratories bred for laboratory use about 2 percent of the dogs and less than 1 percent of the cats used in a one-year period.

The University of California, Davis, estimates that the cost of breeding a laboratory dog is $73.50.[5]

A number of commercial breeders of linebred dogs and at least one breeder of linebred cats exist in the nation.[6]

[4] Replies to questionnaires; *see also* U.S. Congress, House, Subcommittee on Livestock and Feed Grains of the Committee on Agriculture, *Hearings, Regulate the Transportation, Sale, and Handling of Dogs and Cats Used for Research and Experimentation*, 89th Cong. 2nd Sess., 1966, p. 142.

[5] Letter from W. R. Pritchard, D.V.M., Dean, School of Veterinary Medicine, Davis, to Senator Walter W. Stiern, August 12, 1966.

[6] National Academy of Sciences—National Research Council, Institute of Laboratory Animal Resources, *Laboratory Animals, Part II, Animals for Research* (Washington: NAS-NRC Publication 1413, 1966), pp. 19, 20.

D. Gifts

This source of animals is important to one or two users of small numbers of laboratory dogs and cats.

E. Collection From Nature

None of the laboratories replying to the questionnaire reported this as a source of laboratory dogs and cats.

V. LAWS, ORDINANCES, REGULATIONS, AND GOVERNMENT POLICIES REGARDING THE TRANSFER, CARE, AND USE OF LABORATORY DOGS AND CATS

A. Federal Law

On August 24, 1966, the President signed H.R. 13881 of the 89th Congress, thereby enacting Public Law 89-544; the new law authorizes the Secretary of Agriculture "to regulate the transportation, sale, and handling of dogs, cats, and certain other animals" used in laboratories. The purpose of the law, as stated in the preamble, is "to protect the owners of dogs and cats from theft of such pets, to prevent the sale or use of dogs and cats which have been stolen, and to insure that certain animals intended for use in research facilities are provided humane care and treatment . . . ." In its principal provisions, the statute:

(1) Requires the Secretary of Agriculture to license dog and cat dealers;

(2) Prohibits unlicensed dog and cat dealers from buying or selling dogs and cats;

(3) Requires dealers to hold dogs and cats for five business days after acquiring them;

(4) Requires laboratories using dogs or cats to register with the Secretary of Agriculture;

(5) Requires laboratories to purchase dogs and cats from one of the following sources: A licensed dealer, a municipal pound, or a "person who derives less than a substantial portion of his income . . . from the breeding and raising of dogs or cats on his own premises . . .";

(6) Requires laboratories to keep records about the dogs and cats they purchase;

(7) Requires dealers, in a manner to be prescribed by the Secretary of Agriculture, to mark or identify all dogs and cats sold;

(8) Requires the Secretary of Agriculture to establish standards to govern dealers and registered laboratories in the housing, feeding, watering, sanitation, ventilation, and veterinary care of animals (dogs, cats, monkeys, guinea pigs, hamsters and rabbits);

(9) Prohibits the Secretary of Agriculture from establishing standards governing the treatment of animals "during actual research or experimentation" and gives laboratories the authority to determine when experimentation begins and when experimentation ends;

(10) Authorizes the Secretary of Agriculture to revoke a dealer's license for violation of the law;

(11) Makes the violation of the law by a dealer a criminal offense carrying a penalty of imprisonment for up to one year, or a fine of up to $1,000, or both imprisonment and a fine;

(12) Authorizes the Secretary of Agriculture to issue a cease and desist order for violation of the law by a laboratory;

(13) Subjects laboratories to a civil penalty of $500 per day for failure to abide by a cease and desist order;

(14) Requires the Secretary of Agriculture to collect a fee for issuing a license to a dealer.

The effect of the statute is to require the Secretary of Agriculture to license and regulate all dealers in laboratory dogs and cats. This result follows from the fact that the statute applies to all laboratories that receive money from the federal government and all dealers that sell to such laboratories. Virtually all research laboratories that use dogs and cats receive some money from the federal government.[7]

B. California State Law

In 1951, California enacted a statute that sanctions the use of animals for experimental purposes,[8] requires laboratories using such animals to be licensed [9] by the State Department of Public Health, and requires such laboratories to meet the standards established by the department for the care and treatment of laboratory animals.[10]

In its principal provisions, the statute:

(1) Requires the State Department of Public Health to establish standards for the care and treatment of laboratory animals before, during, and after experimentation;

(2) Prohibits the department from compelling municipalities, or anyone else, to transfer animals to laboratories;

(3) Prohibits anyone not licensed by the State Board of Public Health from using laboratory animals;

(4) Requires the State Board of Public Health to license laboratories which comply with the department's regulations;

(5) Authorizes the board to revoke the license of any laboratory that fails to comply with the department's regulations;

(6) Requires the board to investigate complaints about the use of laboratory animals;

(7) Exempts from the statute veterinary hospitals and federal laboratories;

(8) Authorizes cities and counties to continue regulating the disposal of animals in municipal pounds;

(9) Makes the violation of the statute a misdemeanor;

(10) Requires licensed laboratories to pay fees ranging from $5 to $200, depending on the number of animals the laboratory uses.

Pursuant to this statute, the State Board of Public Health has issued regulations,[11] which, in their principal provisions:

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[7] Senate, Public Health and Safety Committee, *Hearing*, Los Angeles, p. 68.

[8] Bennett J. Cohen and Edward Petko, "State and Local Laws Affecting Animal Experimentation in the United States," *Proceedings of the Animal Care Panel*, Vol. 12, No. 2 (April 1962), 56.

[9] The statute uses the word "approved" instead of "licensed," but the effect of the statute is equal to licensing.

[10] California Health and Safety Code, Sections 1650–77.

[11] California Administrative Code, Title 17, Sections 1150–59.

(1) Require laboratories to record the number and kind of animals on hand and used each month and to record the use and disposition of all animals;

(2) Require that laboratory animals be maintained in proper conditions;

(3) Require that laboratory animals be given anesthesia during any operation except "when provisions for maximum comfort including anesthesia would defeat the object of the experiment";

(4) Require laboratories to kill an animal painlessly at the conclusion of an experiment or to give the animal care "essentially equivalent, as determined by the department, to that rendered human beings following an operation";

(5) Require responsible supervision of animal facilities and proper personnel for caretakers of laboratory animals.

As of October 7, 1966, the Department of Public Health had approved the following kinds and numbers of institutions to use laboratory animals:

Research institutions using dogs and cats	56
Research institutions using rodents	39
Institutions using rodents for diagnosis and teaching	288
Total	383

Concerning the administration of the statute, the department furnished the committee with the following information:

The department inspects a laboratory before approving its initial request to be licensed to use animals, and thereafter the department makes inspections at irregular intervals. The frequency of inspections depends on the number of animals used by the institution and on the judgment of the department as to the competence of the personnel at the laboratory. The department inspects some institutions as often as six times a year and other institutions as seldom as once every three years.

In the administration of the statute, the department employs one veterinarian half-time at a salary, in 1965, of $5,885. The department estimates that the total cost of administering the statute in 1965 was about $11,016:

Salaries (veterinary and clerical)	$10,016
Travel	500
Administrative overhead	500
Total	$11,016

Complaints from citizens about laboratories average about 10 a year, and the department states that it discovers more deviations from acceptable standards through its inspections than through investigating complaints.

In response to the question whether the department has ever suspended or revoked the license of a laboratory, the department states: "No, three institutions have been denied permits upon original application, and twelve institutions have been threatened with suspension. However, no reputable institution has failed to respond to a threat of

suspension. The institutions have too much at stake to risk suspension proceedings." [12]

State law does not regulate dog and cat dealers, although such dealers might be subject to city and county business and kennel licenses.[13]

C. Comparison of Federal and State Law

A comparison of the state animal care law with the recently enacted federal legislation shows that the two statutes for the most part cover different subjects. Only the federal law regulates dog and cat dealers. Only the state law regulates the treatment of animals during experimentation; the federal law specifically prohibits the Secretary of Agriculture from dealing with this subject. Both federal and state law regulate the care of animals before and after experimentation, but even here some differences exist between the two laws. The federal law covers monkeys, guinea pigs, hamsters, and rabbits in laboratories which also use dogs and cats. The state law covers all kinds of animals used in all except federal laboratories. The federal law covers all federal laboratories.

The Department of Public Health believes that the area of duplication between federal and state law is small and that the state statute need not be repealed as a result of the enactment of the federal statute.[14]

D. Ordinances in California Cities and Counties

Ordinances governing the disposition of dogs and cats in municipal pounds are of three kinds: (1) those which require the poundmaster to transfer animals to laboratories, (2) those which prohibit the poundmaster from transferring animals to laboratories, and (3) those which authorize the poundmaster to dispose of animals in any manner and are silent on whether he may transfer animals to laboratories.

1. ORDINANCES REQUIRING THE TRANSFER OF POUND ANIMALS TO LABORATORIES

Ordinances in the City of Los Angeles and in Los Angeles County, Orange County, and Ventura County require pounds to transfer, under certain conditions, dogs and cats to laboratories. The following describes the ordinances and states the number of pounds in these jurisdictions.

a. City of Los Angeles

At a municipal election held on November 7, 1950, the electors of Los Angeles approved, by a majority vote, Ordinance Number 97,424, adding paragraph (h) to Section 53.11 of the Los Angeles Municipal Code. In its principal provisions, the ordinance:

(1) Requires the Los Angeles County Health Officer to certify to the city department of animal regulation the names and addresses of laboratories in the City of Los Angeles which, in his judgment, qualify to use laboratory animals;

[12] Letter from Martin E. Goetz, D.V.M., Chief, Public Health Laboratory Veterinary Services, to Senator Walter W. Stiern, October 24, 1966.
[13] Senate, Public Health and Safety Committee, *Hearing*, Los Angeles, pp. 16, 67–8; Goetz letter to Stiern, October 24, 1966.
[14] Letter from Howard L. Bodily, Ph.D., Chief, Division of Laboratories, to Senator Walter W. Stiern, October 27, 1966.

(2) Makes it the duty of the department of animal regulation to surrender unclaimed, impounded animals to such laboratories;

(3) Prohibits the surrender of an animal to a laboratory unless the animal has been held in the pound for five days;

(4) Requires the department of animal regulation to destroy any animal whose owner requests that it be destroyed and prohibits the transfer of any such animal to a laboratory;

(5) Requires the department of animal regulation to enforce standards of animal care, in institutions receiving animals from a municipal pound, comparable to the standards in "Supplement 211 Public Health Reports, 1949, Federal Security Agency, entitled 'Care of the Dog Used in Medical Research.' "

The City of Los Angeles operates five pounds and is in the process of constructing a sixth pound.

b. Los Angeles County

Ordinance Number 4729, Sections 212 and 610, of the County of Los Angeles, governs the transfer of animals in county pounds to laboratories. In its principal provisions, the ordinance:

(1) Requires the poundmaster to deliver dogs and cats to nonprofit laboratories approved by the county health officer after a holding period of at least five days (but not more than 30 days) and upon payment of a fee of $5 for each dog and $2 for each cat;

(2) Prohibits the poundmaster from transferring to a laboratory any animal whose owner requests that it be destroyed.

Los Angeles County operates pounds at four separate locations, and cities within the county support pounds at 18 separate locations.

Nineteen cities in Los Angeles and Orange Counties contract for pound services with the Los Angeles Society for the Prevention of Cruelty to Animals, which operates four pounds. The Los Angeles County ordinance requiring the transfer of animals to laboratories does not apply to these pounds.

c. Orange County

Ordinance Number 1403, Section 11, of the County of Orange, governs the transfer of animals in county pounds to laboratories. In its principal provisions, the ordinance:

(1) Authorizes the poundmaster to transfer to laboratories impounded, unredeemed, and unsold animals that "would normally have been destroyed";

(2) Requires such animals to be held in the pound for five days before any such transfer;

(3) Requires any laboratory purchasing an animal to pay the impound fee and care and feeding charges;

(4) Requires the laboratory to be approved by the State Department of Health, the Orange County Health Officer, and the Orange County Veterinary Officer.

The County of Orange operates one pound, and humane societies, contracting to provide pound services to cities, operate two pounds in the county.

d. Ventura County

Ordinance Number 1183, Section 443.1, of the County of Ventura, adopted March 6, 1962, governs the transfer of animals in county pounds to laboratories. The ordinance authorizes the poundmaster to transfer abandoned animals to laboratories approved by the State Department of Public Health, but requires the following conditions first to be met:

(1) The county health officer must inspect and approve the laboratory at least once in the year preceding the transfer of an animal;

(2) The animal must be held by the pound for at least 20 days before transfer to the laboratory;

(3) A representative of the laboratory must select the animal to be transferred "within five days after the time for redemption has commenced";

(4) The owner of the animal must not have disapproved the transfer of the animal to a laboratory.

The ordinance requires the poundmaster to "keep a record containing a general description, the date of impoundment, the date of selection, the date of transfer, and the name of the transferee of each animal transferred" to a laboratory. The ordinance further requires the poundmaster to charge a fee of $3 for each dog (plus 25 cents for each day of the dog's impoundment) and a fee of $1 for each cat transferred to a laboratory.

Ventura County operates the only pound in the county.

2. ORDINANCES PROHIBITING THE TRANSFER OF POUND ANIMALS TO LABORATORIES

The Cities of Bakersfield, Long Beach and San Rafael; the Counties of Alameda, Marin, and Kern; and the City and County of San Francisco by ordinance prohibit the transfer to laboratories of animals in municipal pounds. (There may be other cities in California with such ordinances.) The San Rafael ordinance, for example, provides: "Neither the poundkeeper nor anyone in its employ shall knowingly sell or give an impounded animal to any person, firm, corporation, association or school for the purpose of animal experimentation. No person, firm, corporation, association or school shall by fraud, misrepresentation, or coercion induce the poundkeeper or anyone employed by it to sell or give away any impounded animal for the purpose of animal experimentation." [15]

3. PERMISSIVE ORDINANCES

Many jurisdictions in California have ordinances which authorize the poundmaster to dispose of animals in any manner, and are silent on whether he may transfer animals to laboratories. The Stockton Municipal Code, for example, provides: "All dogs impounded will be provided with food and water and held for a period of not less than seventy-two (72) hours, unless previously redeemed. All dogs not redeemed by the owner or person having control of the same, within the seventy-two (72) hour period may be killed and buried, or otherwise disposed of." [16]

[15] San Rafael City Ordinance No. 793, Section 5.9.
[16] Stockton Municipal Code, Section 7–133.1.

Cities and counties having this kind of ordinance fall into three categories: (1) those that have a policy against transferring animals to laboratories, (2) those that have a policy in favor of transferring animals to laboratories, and (3) those that have no policy on the matter.

A policy against transferring animals to laboratories is frequently found in a provision of a contract between the municipality and a humane society; the society agrees to operate the local pound on condition that the municipality not require the transfer of animals to laboratories. The Cities of San Leandro, San Diego, Oakland, San Jose, and Berkeley and the County of Santa Clara have such contracts. (Other municipalities having such contracts may exist in the state.)

San Diego County by ordinance prohibits the sale of licensed animals to laboratories but permits the sale of unlicensed animals for any purpose. The county's policy, however, is against the sale of animals to laboratories.

The City of Stockton, and possibly other cities, have a policy in favor of transferring animals to laboratories.

Cities and counties having a policy neither for nor against releasing animals to laboratories presumably will sell animals to anyone who wishes to purchase them at the end of the holding period.

4. HOLDING PERIODS AND NOTICE REQUIREMENTS IN MUNICIPAL ORDINANCES

Municipal ordinances commonly provide a holding period of three to five days for unlicensed animals and seven days for licensed dogs. Some ordinances provide a longer holding period for licensed dogs; Contra Costa County, for example, holds licensed dogs for 14 days.

Many ordinances require the poundmaster, as soon as possible after impounding, to notify the owner of a licensed dog of the animal's whereabouts.

The California Supreme Court, in approving the constitutionality of the City of Los Angeles release ordinance, indicated that holding period and notice requirements are indispensible elements in making such statutes constitutional.[17]

E. State Laws Dealing With the Transfer of Dogs and Cats to Laboratories

Connecticut,[18] Illinois,[19] Iowa,[20] Massachusetts,[21] Minnesota,[22] New York,[23] Ohio,[24] Oklahoma,[25] Utah,[26] and Wisconsin[27] have enacted statutes dealing with the transfer of animals from public pounds to laboratories.[28]

The committee chairman by letter requested information from these states on the following points: (1) whether laboratories have made use

[17] Appendix, p. 51.
[18] Connecticut General Statutes Annotated, Title 22, Sections 332–332C.
[19] Smith-Hurd Illinois Annotated Statutes, Chapter 111½, Sections 128–34.
[20] Iowa Code Annotated, Title 14, Chapter 351A (Sections 351A–351A.7).
[21] Annotated Laws of Massachusetts, Chapter 49A (Sections 1–10).
[22] Minnesota Statutes Annotated, Section 35.71.
[23] McKinney's Consolidated Laws of New York Annotated, Book 44, Public Health Law, Section 505.
[24] Page's Ohio Code Annotated, Title 9, Section 955.16.
[25] Oklahoma Statutes Annotated, Title 4, Sections 391–402.
[26] Utah Code Annotated 1953, Title 26, Chapter 19 (Sections 1–9).
[27] West's Wisconsin Statutes Annotated, Section 174.13.
[28] South Dakota and Colorado, contrary to what is sometimes said, have no statute requiring pounds to transfer animals to laboratories. Letter from Stanley M. Lourimore, Deputy Legislative Counsel, California Legislature, to Senator Walter W. Stiern, November 18, 1966.

of the state law to acquire dogs and cats from pounds; (2) what factors, if any, prevent laboratories from making use of the law; (3) whether enactment of the law caused humane societies to discontinue operating pounds; and (4), if so, whether cities and counties had to build new pound facilities.

The following quotations are taken from the replies:

1. ILLINOIS [29]

"We currently have eight laboratories in Illinois which are making use of our state pound release law to acquire dogs and cats from public pounds for medical research or teaching.

"One reason institutions are not making greater use of this law is local sentiment in some areas of the state. Some laboratory directors feel it is better for public relations to obtain their research animals from a more distant source.

"This law was originally passed in 1951. At the time this law passed, no effort was made to determine whether or not any private associations discontinued pound operations after passage of the law. Although we do not have any direct information on this question, it has been my impression that no great number of operations were discontinued." [30]

2. IOWA

"Several institutions in Iowa have been authorized to obtain dogs from a pound for medical research. It is our impression that none of the institutions have actually requested any dogs.

"We do not have any facts to indicate the reasons dogs have not been requested. It is our impression however that the institutions have been successful in obtaining dogs from other sources. This being the case it would appear that no institution wishes to initiate steps that would lead to court action. Some persons in private associations have given the impression that they will initiate court action in the event an institution does make a request for dogs.

"We have no knowledge of private associations discontinuing their pound operations after passage of the law." [31]

3. MINNESOTA

"Laboratories in Minnesota are definitely making use of this provision to acquire animals from public pounds for medical research. This department licenses seven research facilities in Minnesota, including the Veterans' Administration and the University of Minnesota.

"About the only difficulty that exists is that public pounds are not able to fulfill the demand, thereby making it necessary for research institutions to purchase animals from some private individuals (dog dealers).

"To the best of my knowledge, no private associations have discontinued any of their pound operations after the passage of this law.

"The City Dog Pound of Duluth, Minnesota, has refused to supply dogs for research, based on the fact that the dog pound facilities were

[29] "Thus, in Illinois each community must adopt an enabling ordinance to implement the law. Apparently, nothing in the state law prevents the adoption of local prohibitory ordinances. This renders the state law ineffective. . . ." Cohen, "State and Local Laws Affecting Animal Experimentation in the United States", p. 53.

[30] Letter from Paul R. Schnurrenberger, D.V.M., M.P.H., Chief Public Health Veterinarian, Illinois Department of Public Health, October 27, 1966.

[31] Letter from Arthur P. Long, M.D., Dr. P.H., Commissioner of Public Health, Iowa Department of Health, November 7, 1966.

provided by private donations. These donors specified that dogs were not to be turned over to research facilities. This decision has been upheld by the Duluth City Attorney. We have not pressed the issue in Duluth for the reason that only one physician was involved in research, and he preferred to purchase the few animals that he needed from private individuals rather than oppose the city." [32]

4. NEW YORK

". . . [The] State Commissioner of Health or the Commissioner of Health of New York City may by written order requisition in lieu of destruction or intended destruction unlicensed, unclaimed, or unwanted animals. This includes both dogs and cats. This provision of the law is applicable to all pounds operated by municipalities or by private organizations to which public authority has been delegated by statute or contract. It has been a useful provision of law, although an occasional pound has not made such animals available for research.

"The data concerning dogs and cats requisitioned in New York City are not immediately available. However, last year in upstate New York the 42 laboratories and institutions approved for the use of dogs and cats requisitioned 3,409 dogs and 1,635 cats from pounds. Total usage of animals in these same institutions in 1965 was 11,528 dogs and 9,173 cats. . . .

"Although several private associations threatened to discontinue their pound operations after passage of the state law, we are not aware of any that actually did so, although in some instances their operations were curtailed or modified so that they no longer received tax moneys." [33]

5. OHIO

"It is permissible in Ohio to release dogs not claimed at county operated or privately operated animal shelters and pounds. However it is not mandatory that these animals be held for that purpose. Ohio law merely states that any dog not redeemed within three days from the time it is seized and impounded may, upon payment to the dog warden or poundkeeper of the sum of $3, be sold to any Ohio institution or organization not for profit which is certified by the Ohio Public Health Council as being engaged in teaching or research concerning the prevention and treatment of diseases of human beings or animals.

"In answer to your second question laboratories have made extensive use of this law in Ohio since enough county dog pounds have made animals available under this law. Of course any county pound or privately operated humane shelter that did not want to make such animals available for research was not forced to do so.

"For the same reason (the law was not mandatory) no private associations discontinued their pound operation as a result of this state law." [33A]

6. WISCONSIN

"Under Chapter 174, Wisconsin Statutes, 1961, unclaimed dogs are required to be released to educational institutions chartered under the

[32] Letter from J. G. Flint, D.V.M., Secretary and Executive Officer, Minnesota Livestock Sanitary Board, October 27, 1966.
[33] Letter from Donald J. Dean, D.V.M., Associate Director, New York Department of Health, November 14, 1966.
[33A] Letter from Jack H. Russell, D.V.M., Chief, Veterinary Unit, Ohio Department of Health, December 21, 1966.

laws of the state, and accredited by the University of Wisconsin. . . .

"Educational institutions obtain a considerable part of their total needs from pounds. The remainder are purchased from dealers. To the best of our knowledge, there have been few, if any, private organizations that discontinued operation as a result of the passage of this statute." [34]

F. City and County Pound Release Ordinances in Other States

A study published in 1962 found that 42 communities in 34 states (not including California) and the District of Columbia provided, either by ordinance or by administrative policy, for the transfer of pound animals to laboratories.[35]

G. Laws in Great Britain

Under the Cruelty to Animals Act of 1876, Great Britain regulates animal experimentation much more restrictively than the United States [36] or any of the states.[37] Although the Act of 1876 does not regulate the supply of animals for experiments, Section 3(5) of the Dogs Act of 1906 prohibits the police from giving or selling seized dogs "for the purpose of vivisection." [38]

In February 1965, a committee appointed by the Home Department of the British government completed an extensive investigation of animal experimentation with a view to making recommendations for changes in the laws; included in the committee's investigation were questions about the supply of laboratory dogs and cats. The committee found that dealers have been the chief source of supply of dogs and cats to British laboratories and that recently the laboratories have begun to undertake breeding programs.[39] Scientific organizations requested the committee to recommend that animals ordinarily destroyed in police pounds, as distinguished from the pounds operated by animal welfare groups, be turned over to laboratories. The arguments used in support of this proposal were:

> (i) There is a great shortage of dogs and cats for experimental purposes, and a fraction of the numbers destroyed in London annually would probably supply the research needs of the whole country in respect of these animals;
>
> (ii) The breeding of cats and dogs by laboratories is very expensive and places an unnecessary burden on the taxpayer (who foots a large part of the bill for research);
>
> (iii) If stray animals could be used the trade in stolen pets would be done away with;
>
> (iv) Stray animals are those generally proved to be ownerless and not wanted by anybody;
>
> (v) From the point of view of the animals, there is no difference between the administration of a fatal anaesthetic before an experiment from which it will not be allowed to recover, and the administration of an anaesthetic preceding humane destruction.[40]

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[34] Letter from D. N. McDowell, Director, Wisconsin Department of Agriculture, October 26, 1966.
[35] Cohen, "State and Local Laws Affecting Animal Experimentation in the United States", p. 52.
[36] U.S. Congress, House, Subcommittee on Interstate and Foreign Commerce, *Hearings*, 1962, p. 27 *et passim*.
[37] Cohen, pp. 49, 53–5.
[38] Great Britain, Home Office, *Report of the Departmental Committee on Experiments on Animals*. Cmd. 2641 (London: Her Majesty's Stationery Office, 1965) (hereafter cited as *Littlewood Report*), p. 173.
[39] *Littlewood Report*, p. 173.
[40] *Littlewood Report*, p. 181.

The committee found that the proposal had previously been rejected by the Home Office because (1) moderate as well as antivivisectionist opinion would oppose the action, (2) animal welfare groups, which in some areas receive and dispose of animals seized by the police, would not join in with the scheme, and (3) the police might be hampered in administering the animal control law "if the public knew that strays might be sent to the laboratories."[41] The committee further found that the police would be opposed to releasing pound animals to the laboratories because

> To compel those who destroy strays to offer them first to laboratories would arouse widespread public disapproval. The odium would fall on those who handed the animals over and on the laboratories when the public are looking to be persuaded that animal experimentation is decently conducted. This seems to be too big a price to pay.[42]

The committee concluded: "We agree with this view and recommend that the provisions of Section 3(5) of the Dogs Act of 1906 should be retained."[43]

VI. REPRESENTATIONS AS TO THE EXISTENCE OF PROBLEMS IN THE PRESENT AND FUTURE SUPPLY OF LABORATORY DOGS AND CATS

At the committee hearing in Los Angeles and in communications by letter with the committee, laboratories made five representations:

First, that in the northern part of the state the supply of laboratory dogs and cats is inadequate. The inadequacy consists, it was said, of the following facts: Laboratories in the San Francisco Bay area must buy animals from dealers who truck them long distances; as a consequence the animals arrive in poor physical condition. Dealers are unreliable with respect to handling, care, and delivery of animals. The supply of animals fluctuates and causes the laboratories to be "alternately overcrowded and then undersupplied."[44] The supply of animals from pounds governed by the permissive kind of ordinance is uncertain; the municipality may cut off the supply at will.

Second, that the demand for dogs and cats will increase at a very fast rate in California. The causes of this are the following facts: Medical, dental, and veterinary schools are expanding rapidly in California to meet the demands of a growing population; the University of California, for example, will soon open new medical schools at San Diego and Davis. Expenditures for medical and biological research are increasing rapidly; public expenditures nationwide have increased from 261 million in 1955 to about 1.9 billion in 1966, about two-thirds of which is federal expenditures.[45] The public's demand for the immediate application of new medical techniques require more dogs and cats in teaching hospitals so that physicians can learn the new forms of treatment. Finally, new federal laws on drug safety require increased drug testing and increased use of dogs and cats.

[41] *Littlewood Report*, p. 181.
[42] *Littlewood Report*, p. 182.
[43] *Littlewood Report*, p. 182.
[44] Senate, Public Health and Safety Committee, *Hearing*, Los Angeles, p. 84.
[45] U.S. Congress, Senate, Committee on Commerce, *Hearings, Animal Dealer Regulation*, 89th Cong., 2nd Sess., 1966, p. 235.

Third, that, in all parts of the state, the increased demand for laboratory dogs and cats and the new federal statute regulating dealers will cause the cost of dogs and cats purchased from dealers to increase. The new federal legislation will require dealers to build facilities for a five-day holding period, maintain and care for the animals during the holding period, identify the animals in a manner prescribed by the Secretary of Agriculture, and pay a license fee.

Fourth, that in the southern part of the state, although present supplies of laboratory dogs and cats are adequate,[46] increasing demand will require laboratories to travel to more distant pounds to obtain laboratory animals; thus the increased cost of transportation will increase the cost of the animals.

Fifth, that present inadequacies and increasing costs will handicap teaching and slow research.

All of these problems would be solved, according to the laboratories, if the state, by preempting the field of disposing of animals from municipal pounds, required pounds to transfer unclaimed animals, otherwise to be destroyed, to the laboratories. Laboratories in the northern part of the state would no longer have to rely on dealers to acquire animals, and the animals would be in better physical condition. Supply would be plentiful and certain. The cost of animals would not increase. Dealers would be used little, if at all, by the major laboratories. In southern California, the laboratories would be able to use animals in many pounds in the Los Angeles area that are now closed to them; thus transportation costs would be kept down. Finally, medical research and teaching would be cheaper and would not be slowed down by a lack of animals.

A subsidiary benefit will flow from the enactment of a state law, according to the laboratories: If dealers acquire animals from thieves, and if the laboratories, as a consequence of the enactment of a state statute, can stop buying animals from dealers, theft of animals for laboratories will be ended.

Persons who oppose the enactment of a statewide pound release law raised a number of questions about the correctness of the position of the laboratories. They argued that pound animals are not suitable, from a scientific standpoint, for use as laboratory animals; that even if some pound animals are suitable, their number is too small to be significant; that a state law would disrupt the operation of pounds in municipalities having agreements with humane societies to operate the pounds; that a state law would disrupt the work of humane societies other than pound operation; that a state law, no matter how carefully written, would cause pet owners anxiety about the possible use of their pets in laboratories; that the economic effect of a state law would be to increase expenditures, not decrease them; that a state law would be attacked as unconstitutional; that teaching and research are not likely to be handicapped even if the cost of laboratory dogs and cats increases considerably; and that several alternatives to the enactment of a state law exist.

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[46] Senate, Public Health and Safety Committee, *Hearing*, Los Angeles, p. 31.

The remainder of this report consists of three parts: first, a statement of what a statewide pound release law, as proposed by the laboratories, would do; second, a discussion of the issues as to whether a statewide pound release law should be enacted; and third, a discussion of the alternatives to the enactment of such a law.

VII. A STATEWIDE POUND RELEASE LAW AS PROPOSED BY LABORATORIES

As proposed by the laboratories, a statewide pound release law would:

(1) Repeal Section 1670 of the Health and Safety Code, which in effect provides that cities and counties may regulate the disposition of animals from municipal pounds;

(2) Require poundmasters to release unredeemed and unsold dogs and cats, after a holding period of from 5 to 20 days, to laboratories approved by the State Department of Public Health;

(3) Prohibit poundmasters from transferring to a laboratory any animal whose owner requests that it be destroyed;

(4) Require the laboratories to pay appropriate fees for the animals transferred to them;

(5) Require pounds and laboratories to keep appropriate records;

(6) Provide a method of enforcement to be used if poundmasters failed to abide by the state law;

(7) Apply to all pounds operated by cities and counties and all pounds operated by humane societies at public expense.

VIII. DISCUSSION OF THE ISSUES CONCERNING THE WISDOM OF ENACTING A STATEWIDE POUND RELEASE LAW

1. Are any pound animals, from a scientific point of view, suitable for use in laboratories?

Science requires uniformity in its experimental tools so that variables may be reduced and experiments made reliable, accurate, precise, and reproducible. The two variables in living things are genetic makeup and environmental history.

Pound animals are arguably poor tools for scientific work because all of them are to some extent physically, temperamentally, and genetically unknown quantities.

No one knows the stresses a pound dog or cat has undergone, the diseases it has suffered or is suffering from, the food it has eaten, the state of its nutrition, whether it is vicious, and what its genetic background is.

An animal acquired from a pound may be in very poor health. A study, for example, found that 87 of 100 adult stray dogs received at Mount Sinai Hospital in New York were infected with parasites. "Thirty-two of the animals had two species of parasites, 20 had triple infections, and 4 harbored four species of parasites." [47]

[47] Phillip H. Mann and George Bjotvedt, "The Incidence of Heartworms and Intestinal Helminths in Stray Dogs," *Laboratory Animal Care,* Vol. 15, No. 1 (1965), 102.

Scientists readily agree that using animals whose history is unknown can cause misleading results, lost time, and expense.[48] An experiment may be frustrated when a disease, not apparent at the beginning of an experiment, appears during the course of the experiment, perhaps killing the animal.[49] For example, an erroneous pathologist's report, based on tests in dogs having a distemper infection, caused a two-year delay in the marketing of a now widely used product; this incident led Eaton Laboratories, a division of Norwich Pharmacal Company, in 1955 to begin a dog breeding program to improve the reliability of its experimental animals.[50] Dr. Joshua Lederberg, Nobel Prize-winning biologist of Stanford University, has written, "Scavenging animals with unknown histories from the streets . . . seems an incongruous way to get experimental material which must later be subject to the most scrupulous observation and, for the most useful findings, ideal care." [51]

The disadvantages of using pound animals, however, are not conclusive of the question whether any of them are useful for scientific experimentation; one must, in the first place, distinguish between acute and chronic experiments. An acute experiment is one in which an animal is anesthetized before the experiment begins and is destroyed before it regains consciousness. Chronic experiments, on the other hand, require postoperative or long-term observation of the animal. In a chronic experiment, for example, a researcher might wish to determine if a surgical operation is technically possible, if complications result from the operation, and how the experimental animal functions after the operation. The testing of drug dosages and effects often involves long-term study. In some radiation experiments, the researcher must observe an animal for years.

The disadvantages of using pound animals for laboratory use apply most strongly to their use in chronic experiments, and scientists agree that animals acquired from pounds must undergo a three- to six-week conditioning period before being used in a chronic experiment.[52] During the conditioning period the animal is bathed, clipped (if long-haired), weighed, given a vermifuge or a vermicide, dipped in ectoparasiticide, evaluated for health and temperament, given a physiological examination (including a hemogram and a urinalysis), vaccinated (for distemper, hepatitis, and rabies), and, if necessary, devocalized.

Even though the disadvantages of using pound animals applies most strongly to their use in chronic experiments, some scientists have concluded that, to some extent, the disadvantages apply to animals used in acute experiments as well. A scientific symposium on the production

[48] U.S. President's Commission on Heart Disease, Cancer and Stroke, *Report to the President*, Vol. 1 (December 1964), 68; W. Lane-Petter, "The Place of Laboratory Animals in the Scientific Life of a Country," *Impact of Science on Society*, Vol. 9, No. 4 (1959), 186; U.S. Congress, House, Subcommittee of the Agriculture Committee, *Hearings*, 1966, p. 76; Senate, Public Health and Safety Committee, *Hearing*, Los Angeles, p. 28.

[49] Lane-Petter, p. 189.

[50] John E. Gilmartin, "The Establishment of a Dog Breeding Kennel for Pharmaceutical Research," *Proceedings of the Animal Care Panel*, Vol. 11, No. 4 (1961), 222–4.

[51] Joshua Lederberg, Ph.D., "Animals for Research, If Cats and Dogs Were Bred for Laboratory, Medicine Would Benefit and Pets Be Safe, " *The Washington Post*, August 21, 1966, p. E7.

[52] National Academy of Sciences—National Research Council, Institute of Laboratory Animal Resources, *Procurement Specification (Contract Clause) I. Nonconditioned Random-Source Dogs* (Washington: NAS–NRC, 1966), p. [iii].

of disease-free dogs for research concluded, "For acute experiments, such as those conducted by physiologists or surgeons, requirements for disease-free or immunized dogs may not be essential but, even for such work, uniformity of results might warrant the increased expenditures." [53]

The fact that laboratories acquire a large percentage of experimental animals from pounds is conclusive that such animals are suitable for use in laboratories for some purposes, in the judgment of scientists. Tables 5 and 6 show that California laboratories are using many dogs and cats acquired from pounds. A study published in 1964 found that, in a one-year period, 76 medical schools in the nation acquired 57,540 dogs from pounds and that 71 medical schools acquired 7,599 cats from pounds.[54] Dr. Morris Barenfus, V.M.D., testifying in favor of a statewide pound release law, told the committee: "There are valuable acute anatomic, physiologic and surgical techniques to be developed and taught. There are drug studies that must be done on varied populations. Uniform, laboratory-bred animals . . . are even contraindicated in some studies." [55]

2. Assuming that some dogs and cats being destroyed in the pounds are suitable for laboratory use, is the number of such animals large enough to make pounds a significant scource of supply of laboratory animals?

Table 8 shows that 17 counties and 19 cities in California destroyed more than 240,000 dogs and 230,000 cats during the year ending June 30, 1966. A number of witnesses, including representatives of laboratories,[56] pointed out that a large number of the destroyed animals would not have been suitable for use by laboratories. The destroyed animals include many that are sick, injured, aged, immature, pregnant, lactating, blind, lame, and temperamentally unsuitable for laboratory use. Moreover, many of the animals are destroyed at the request of the owner, and the laboratories' proposal for a release law prohibits transferring such animals to laboratories.

Representatives of laboratories nevertheless asserted that the number of destroyed animals, suitable for laboratory use, far exceeds the laboratories' requirements. A. G. Edward, D.V.M., of the University of California, Davis, said, "The entire campus need for dogs and cats in the next five years could be met by just one of the three pounds in our neighboring city of Sacramento." [57]

Representatives of animal welfare groups claimed, contrary to the assertion of the representatives of the laboratories, that the number of animals destroyed by the pounds and suitable for laboratory use is so small as to be "an undependable source of research animals." [58] Charles W. Friedrichs, executive director of the San Francisco Society for the Prevention of Cruelty to Animals, analyzed the dogs destroyed during

[53] Symposium, "Production and Management of Dogs for Research," *Proceedings of the Animal Care Panel*, Vol. 11, No. 4 (1961), 244.
[54] National Academy of Sciences—National Research Council, Institute of Laboratory Animal Resources, *Animal Facilities in Medical Research, Final Report, Tabular Appendix* (1964), p. 87.
[55] Senate, Public Health and Safety Committee, *Hearing*, Los Angeles, pp. 28–9.
[56] Senate, Public Health and Safety Committee, *Hearing*, Los Angeles, p. 28.
[57] Senate, Public Health and Safety Committee, *Hearing*, Los Angeles, p. 36.
[58] Senate, Public Health and Safety Committee, *Hearing*, Los Angeles, p. 153.

a one-year period in the San Francisco pound, which is operated by the society, as follows:

Destroyed		1,310
Badly injured and seriously sick	241	
Sick, aged, and immature	961	
Total unfit dogs	1,202	
Possibly suitable for research		108

George M. Crosier, general manager of the Los Angeles Society for the Prevention of Cruelty to Animals, analyzed dogs destroyed in a six-month period in pounds under his jurisdiction as follows:

Destroyed		2,358
Old, sick, injured, or temperamentally unsuitable for research	2,241	
Possibly suitable for research		117

Finally, Charles W. Friedrichs asserted that the number of suitable laboratory animals destroyed in pounds is diminishing. According to Mr. Friedrichs, people are abandoning fewer dogs and cats, owing to the availability of services to dispose of unwanted animals and the existence of a state law making abandonment of animals a crime.[59]

Data acquired by the committee from questionaires sent to cities, counties, and laboratories show that a large number of laboratory dogs and cats are presently being acquired from municipal pounds. Table 5 shows that 65 percent of the dogs and 71 percent of the cats used in 41 laboratories in a one-year period came from pounds. Table 8 shows that six counties and three cities supplied almost all of these animals.

Table 9 shows that four municipally operated pounds and six municipal pounds operated by humane societies estimate that more than 39,000 reasonably healthy dogs were destroyed in the pounds in the year ending June 30, 1966, and that none of these animals were destroyed at the request of the owner.

Table 10 shows that four municipally operated pounds and four municipal pounds operated by the humane societies estimate that more than 17,500 reasonably healthy cats were destroyed in the pounds in the year ending June 30, 1966, and that none of these animals were destroyed at the request of the owner.

Representatives of animal welfare groups used, as evidence that significant numbers of pound animals are not suitable for laboratory use, the fact that some laboratories, located in areas where pound release laws exist, nevertheless purchase dogs and cats from dealers. Table 6 shows that 15 percent of the dogs and 6 percent of the cats used in a one-year period in laboratories located in southern California were purchased from dealers. One possible explanation is that, for small laboratories, dealer animals may be cheaper than pound animals owing to the cost of transporting pound animals. Another explanation may lie in the fact that Los Angeles County prohibits commercial laboratories from purchasing pound animals. Finally, an explanation may lie partly in the fact that the Los Angeles city ordinance is restricted to laboratories located in the city.

[59] Appendix, p. 51.

3. Would the enactment of a statewide pound release law disrupt pound operation and animal control work in municipalities that contract with humane societies?

Witnesses at the hearing, both those for and those against a statewide pound release law, assumed that a statewide pound release law would apply to all pounds supported with public funds, even if the operator of the pound is a private organization.[60]

TABLE 9

Reasonably Healthy Dogs Destroyed in 10 Jurisdictions During the Year Ending June 30, 1966

Jurisdiction	Destroyed	Aged, immature, seriously sick, and injured	Reasonably healthy	Reasonably healthy, but destroyed at owner's request	Reasonably healthy and destroyed
Pounds supported entirely with public funds					
Monterey County	4,718	50	4,668	100	4,568
San Diego County	4,685	47	4,638	235	4,403
City of Alameda	141	20	121	12	109
City of Sacramento	4,185	127	4,058	127	3,931
Total	13,729	244	13,485	474	13,011
Pounds supported in part with private donations					
Alameda County	970	943	27	20	7
Fresno County	17,896	320	17,576	240	17,336
City of Hayward	586	549	37	25	12
City of Glendale	926	202	724	20	704
City of Riverside	8,243	1,407	6,836	1,129	5,707
City of San Jose	4,293	175	4,118	1,536	2,582
Total	32,914	3,596	29,318	2,970	26,348
Grand total	46,643	3,840	42,803	3,444	39,359

TABLE 10

Reasonably Healthy Cats Destroyed in Eight Jurisdictions During the Year Ending June 30, 1966

Jurisdiction	Destroyed	Aged, immature, seriously sick, and injured	Reasonably healthy	Reasonably healthy, but destroyed at owner's request	Reasonably healthy and destroyed
Pounds supported entirely with public funds					
Monterey County	5,796	65	5,731	200	5,531
San Diego County	3,489	100	3,389	350	3,039
City of Alameda	1,347	45	1,302	5	1,297
City of Sacramento	1,076	44	1,032	44	988
Total	11,708	254	11,454	599	10,855
Pounds supported in part with private donations					
Alameda County	1,154	1,122	32	25	7
City of Hayward	1,006	981	25	15	10
City of Riverside	11,320	1,803	9,517	3,897	5,620
City of San Jose	4,460	96	4,364	3,174	1,190
Total	17,940	4,002	13,938	7,111	6,827
Grand total	29,648	4,256	25,392	7,710	17,682

[60] Senate, Public Health and Safety Committee, *Hearing,* Los Angeles, pp. 28, 162.

Theoretically it is possible to draft a statute that does not apply to municipal pounds operated by humane societies, but this would unfairly discriminate against other municipalities by making them obey a law not applicable to all municipalities. Another alternative in drafting the statute is to give municipalities the option of rejecting the requirements of the state statute, but this alternative would in effect not change present law.[61]

Thus if a statewide pound release law were enacted, it would preempt the authority of municipalities to dispose of pound animals and would directly affect the political and administrative arrangements in municipalities having contracts with humane societies to operate pounds. The following is a list of humane societies, affiliated with the State Humane Association of California, having such contracts and of the contracting cities and counties.[62]

Name of Society	*Contracting cities*	*Contracting counties*
Berkeley-East Bay Humane Society	Emeryville Albany	
Central California SPCA	Fresno Mendota Kingsburg Clovis Sanger San Joaquin Parlier Hanford	Frenso
Peninsula Humane Society	Daly City Brisbane So. San Francisco San Bruno Millbrae Pacifica Half Moon Bay Hillsborough Burlingame San Mateo Belmont San Carlos Redwood City Atherton Woodside Portola Valley	San Mateo
Humane Society of Pomona Valley	Pomona Claremont LaVerne	
Riverside County Humane Society	City of Riverside	
San Francisco SPCA	San Francisco	San Francisco
San Luis Obispo County SPCA	Arroyo Grande Grover City Morro Bay Pismo Beach San Luis Obispo Paso Robles	San Luis Obispo

[61] See note 29 and p. 24 of this report.
[62] Letter from Charles W. Friedrichs, President, State Humane Association of California, to Senator Walter W. Stiern, December 5, 1966.

Name of Society	*Contracting cities*	*Contracting counties*
Santa Barbara Humane Society	Guadalupe Santa Maria Lompoc Carpinteria	Santa Barbara
Humane Society of Santa Clara Valley	San Jose Santa Clara Sunnyvale Mountain View	Santa Clara
Los Angeles SPCA	Beverly Hills Culver City Inglewood Hawthorne El Segundo Torrance Palos Verdes Estates Gardena Manhattan Beach Hermosa Beach Redondo Beach South Gate Lynwood Bell Huntington Park Whittier Santa Fe Springs Compton Laguna Beach	
Humane Society of Marin County	Belvedere Corte Madera Fairfax Larkspur Mill Valley Novato Ross San Anselmo San Rafael Sausalito Tiburon	Marin
Oakland SPCA	Fremont Newark Union City Hayward San Leandro Piedmont	Alameda
Palo Alto Humane Society	City of Palo Alto	
The Pasadena Humane Society	Pasadena South Pasadena Sierra Madre	
Santa Cruz County Animal Welfare Assn., Inc.	Capitola	Santa Cruz
Humane Society of Sonoma County	Santa Rosa	Sonoma
Tulare County Humane Society	Visalia Tulare Lindsay Exeter Porterville Woodlake Dinuba Farmersville	Tulare
United Humane Society	Barstow	San Bernardino (part)

The following is a list of some other humane societies, not affiliated with the State Humane Association of California, and of cities contracting with them:

Name of Society	*Contracting cities*
Glendale Humane Society	Glendale
San Gabriel Valley Humane Society	San Gabriel Alhambra San Marino West Covina
Santa Cruz SPCA	Santa Cruz

In some of these jurisdictions, the humane society owns the pound and the land on which it is located. In other jurisdictions the municipality and the humane society have shared the cost of the pound.

In some of these jurisdictions the operating expense of the pound is paid by the municipality. In other jurisdictions the humane society contributes money, derived from private donations, to defray part of the operating expense of the pound.

Table 11 shows 10 instances of fiscal relationships between municipalities and humane societies.

The guiding purpose of humane societies is to protect the welfare of animals. In accordance with that purpose, the constitution or the bylaws of all humane societies prohibit transferring to laboratories animals under humane society control. The societies permit an unclaimed animal to be transferred to a new owner if he promises not to permit the animal to be used in an experiment. The societies destroy unclaimed, unsold animals.[63]

Enactment of a statewide pound release law would force each humane society operating a pound under contract with a municipality to choose between two alternatives: (1) the society could sever its relationship with the municipality, or (2) the society could surrender its policy that animals under its control cannot be transferred to laboratories.

If a society severed its relationship with a municipality, the municipality might purchase the society's interest in the pound. If that was

TABLE 11

Sources of Construction Funds and Operating Costs of Pounds in 10 Jurisdictions

Jurisdiction	Construction of pound			Operating costs 1965–66	
	Total	Public funds	Private donations	Public funds	Private donations
Marin County	Unknown	$0.00	100%	$131,453	$32,547
San Francisco City and County	$500,000 plus land	0.00	$500,000	136,943	53,629
Alameda County	259,000	0.00	259,000	114,017	15,003
Santa Cruz County	28,000	10,000	18,000	24,120	9,717
San Luis Obispo County	19,172	0.00	19,172	Unknown	Unknown
Tulare County	30,873	0.00	30,873	45,000	1,112
City of Glendale	100,000	0.00	100,000	14,175	6,591
City of Pomona	40,000	21,000	14,000	47,665	5,038
City of Riverside	83,475	25,000	58,475	33,500	35,030
City of Santa Monica	Unknown	Unknown	Unknown	17,047	16,010
Total	1,060,520	56,000	999,520	563,920	174,677

[63] Senate, Public Health and Safety Committee, *Hearing*, Los Angeles, p. 152.

not possible, the municipality might have to build a pound to replace the humane society pound.

If the society severed its relationship with the city or county, the city or county might have to use public funds to pay operating costs now paid with private donations.

The committee asked 49 cities and 26 counties if the municipal budget for animal control would increase as a consequence of enacting a statewide pound release law, and, if so, what percent of the animal control budget the increase would amount to. Six counties and five cities replied affirmatively to this question; Table 12 shows the results.

If humane societies decided to surrender their principles and to continue to operate municipal pounds, the consequence would be, according to the societies, to undermine the societies' effectiveness in areas other than pound operation: rabies control, the care of injured animals, and the enforcement of animal control ordinances. Private donations to humane societies would decrease, the societies believe, and they could no longer carry on these responsibilities, which they fulfill in a number of jurisdictions.

The societies predict other disruptive effects on municipalities. Owing to revulsion against the idea of sending an animal to a laboratory, some people would abandon unwanted animals in the streets and the countryside rather than surrender them to a pound, and some people would fail to report stray animals to the police.

Finally, humane societies predict that widespread abhorrence of pound release laws would cause continuing political agitation.

4. Can a statewide pound release law be written with sufficient safeguards to eliminate the anxieties of pet owners about the possibility that pets may be transferred from pounds to laboratories?

Scientists argue that a statewide pound release law can be written that will protect pet owners from the possibility that their dogs and cats will be transferred to laboratories. If a five-day holding period is not long enough, it can be made longer. People miss pets almost as soon as they do a child; vacationers who leave an animal with a friend might need a holding period of more than five days, but even in that

TABLE 12

Estimated Increase in Animal Control Budget Following Enactment of a State Law Governing the Release of Pound Animals

Jurisdiction	Total annual increase	Percent of animal control budget
County		
Marin	$35,000	20
Contra Costa	28,350	8
Sacramento	3,000	1.5
Santa Cruz	10,000	25
Riverside	30,000	33
San Bernardino	15,000	20
City		
Sunnyvale	850	10
San Jose	10,000	25
Hayward	300,000	200
Glendale	12,000	58
Long Beach	1,400	1
Total	$445,600	

situation it is likely that the friend would search the pound if the animal disappeared.

As far as dogs are concerned, a pound release law can contain a requirement that pounds must give actual notice by letter or telephone to the owner of a licensed dog of the dog's whereabouts, and the holding period for a licensed dog can be longer than for other animals.

The statute can protect other interests of pet owners by requiring the pound to destroy any pet at the request of the owner and by providing that persons who wish to adopt an impounded animal as a pet have the first right to purchase it.

Laboratories further argue that a statewide pound release law would benefit pet owners in two ways. First, if the pound transfers an animal to a laboratory instead of destroying it, the owner thereby obtains an additional period to search for the animal. Second, the laboratories argue that pet owners benefit from the availability of animals in pounds to laboratories, because, as a consequence, the laboratories do not have to purchase animals from dealers, and it is possible that dealers acquire animals by theft. This argument constitutes a separate issue and will be discussed below.

Pet owners, on the other hand, argue that all pound release legislarion, no matter how carefully written, violates their feelings and their moral and legal interests. Many people feel toward pets as they do toward beloved human beings. They believe that the relationship between man and animal teaches respect for life and that this respect is transferred to a respect for the value, dignity, and sacredness of human life.

Many people with these feelings and beliefs about animals are not opposed to medical experimentation when conducted under good conditions and when the experimenter recognizes and fulfills a moral responsibility to cause as little suffering as possible. Despite this intellectual position, however, accounts of medical experimentation conducted under good conditions and for good reasons cause these people distress when they think of a pet undergoing such an experiment.[64] Consequently, these people prefer to know that a pet has been destroyed than to think that it may have been used in an experiment. They would suffer anxiety from the thought that a lost pet might be transferred from a pound to a laboratory, even if the possibility of that happening were small. Some scientists may regard this attitude as irrational, but it is a "hard fact that has to be taken into account in any system of procurement. . . ."[65]

Two further worries add to the anxieties of pet owners. First, because in some communities many pounds exist, the owner of a lost pet might find it difficult to visit all of them during the holding period. Second, since pets are the best cared for and the healthiest of dogs and cats, pet owners feel that pound release ordinances do result in the transfer of pets to laboratories even though safeguards exist in the ordinances and even though laboratories state that they do not, under any circumstances, wish to have pets transferred to them.

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[64] U.S. Congress, House, Subcommittee on Interstate and Foreign Commerce, *Hearings*, 1962, pp. 201–2, 222–7, 259; U.S. Congress, House, Subcommittee of the Agriculture Committee, *Hearings*, 1966, p. 32.

[65] Lane-Petter, pp. 185–6.

5. Would the enactment of a statewide pound release law be intrinsically good or bad?

Scientists argue that using pound animals is morally good because it is for a moral purpose—the relief of pain, disease, and suffering in man and in animals. Medical science has lengthened man's life and made life easier from birth to death. People want progress in medical science to continue; they do not wish to see it handicapped. The vast majority of people, it is argued, would approve transferring animals, otherwise to be destroyed, to the laboratories.

Scientists point out further that the destruction of pound animals is pure waste, which is in itself bad public policy, and which is here made worse by being inconsistent with public policy in support of medical research. The thousands of animals, many of which are suitable for medical research, that are destroyed annually in the public pounds constitute a valuable resource, and destroying them is pure loss not only to medical research, but also to the public. Two branches of government—the federal and the state—support medical research with large sums of money. At the same time, cities and counties destroy animals whose use would significantly lower the cost of the research. To continue this state of affairs, it is argued, is folly.

The goal of humaneness toward animals, argue the scientists, is much better served by allowing the laboratories to use the animals in experiments than to destroy them in gas chambers, decompression chambers, and electrocution chambers. The destruction of animals by these means causes them to suffer pain, fear, and terror.[66] Destruction in laboratories, the scientists argue, is more humane than destruction in pounds. If used in an acute experiment, an animal never experiences any pain or fear at all. To argue that animals should be bred for use in the laboratories is simply to say that two animals should be destroyed instead of one—a position that is the opposite of humaneness toward animals.[67]

The humane societies reply to these arguments by pointing out that they too serve a moral purpose—the protection of animals—and that, by state preemption of this field, to force humane societies to give up their principles when perfectly good alternatives exist, is ignoble, unnecessary, and unworthy of government. The humane societies have done exemplary work for many years in many communities. Thousands of animals have been rescued from distressing situations. Animals injured on the streets and highways have been cared for or disposed of. State preemption would force these societies to turn animals over to laboratories for experimentation, something they cannot do and remain faithful to their beliefs. Other alternatives exist: communities in which humane societies do not share in animal control work can transfer animals to laboratories if they choose. A number of cities and counties now do this. There is no need to force all communities into a rigid statewide conformity to benefit the interests of one group—medical researchers. This amounts to compelling one group—the humane societies—to use their resources (and the money of people who in good faith have made contributions to them) for the benefit of another group —the medical researchers. This is unfair and immoral. Present law is

[66] Oscar Sussman, "The Need for Animals in Medical Research," *Public Health News*, Vol. 45, No. 1 (January 1964), 16–7.
[67] Sussman, p. 16.

much better: Each community can work out its animal disposal policy according to its own ideas of what is best.

6. Considering all of the economic consequences of enacting a statewide pound release law, would the result be a saving?

Representatives of laboratories argue that pounds are the cheapest source of animals and that, if the laboratories can acquire the needed animals from pounds instead of from dealers or by breeding them, the cost of medical research and teaching will be less expensive. Table 5 shows that the statewide average cost of dogs purchased from a pound is $4.19 and that the statewide average cost of dogs purchased from a dealer is $8.64. Cats purchased from a pound cost $1.82 on the average and cats purchased from a dealer cost $4.40 on the average. (As mentioned above, it is almost certain that the effect of the new federal law will be to increase the cost of animals purchased from dealers.) The University of California, Davis, estimates that the cost of raising a laboratory dog to the usable age of eight months will be $73.70.[68]

The cost of making pound and dealer animals available for laboratory use is greater than the initial cost of acquisition shown above. Transportation is a significant item of cost, especially for those laboratories collecting large numbers of animals from pounds. One laboratory in the Los Angeles area reports an annual expenditure of $16,260 for a full-time driver, a relief driver, and a truck. Another such laboratory reports an annual expenditure of $10,000 for a full-time driver and a truck. Laboratories using relatively few dogs and cats (130 to 150 annually) report that the cost of transportation makes the acquisition of animals from pounds excessive and give that as a reason for purchasing animals from dealers.[69]

Another significant item of cost is the conditioning of animals acquired from pounds and dealers. The University of California, Davis, estimates that the cost of a dog's three-week conditioning period, including care and medical treatment (but not including the purchase price of the dog, transportation costs, and the cost of constructing and maintaining housing facilities), is $13.64. Since the cost of daily care for three weeks is $7.14, the cost of a maximum conditioning period of six weeks would be $20.78.[70]

It is sometimes suggested that the laboratories should use only animals bred for laboratory use. The laboratories reply that it would be an impractical waste to use animals bred for laboratory use in acute experiments, in which the animal is anesthetized before the experiment and destroyed before regaining consciousness.[71] An animal purchased from a pound or a dealer and conditioned for six weeks costs only 20 or 30 dollars, and to use an animal costing 75 dollars or more for a one-time experiment would be excessive. Moreover, animals used in acute experiments do not always require extensive conditioning.[72]

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[68] Letter from W. R. Pritchard, D.V.M., Dean, School of Veterinary Medicine, Davis, to Senator Walter W. Stiern, August 12, 1966.
[69] Information reported in returns from a committee questionnaire.
[70] Pritchard letter, August 12, 1966.
[71] Senate, Public Health and Safety Committee, *Hearing,* Los Angeles, p. 43; *Littlewood Report,* p. 180; Letter from William S. Fletcher, M.D., Associate Professor of Surgery, University of Oregon Medical School, to Senator Walter W. Stiern, November 2, 1966.
[72] *Nonconditioned Random-Source Dogs,* p. [iii].

The University of California, Davis, will soon be using 6,000 animals annually. If half of them are used in acute experiments, the difference in cost between using a $25 conditioned animal and a $75 laboratory-bred animal would be $150,000 a year.

The alternatives, however, are not simply between using animals purchased from a pound or using animals bred for laboratory use. Even if the state does not enact a statewide pound release law, the laboratories will still be able to get animals from pounds, as they do now, and the cost of animals purchased from dealers may go up without equaling or even approaching the cost of breeding an animal.

In addition to these matters, one must consider that the enactment of a statewide pound release law will have some impact on the cost of municipal pound operations. First, if a state law should increase the length of the holding period of animals transferred from pounds to laboratories, the cost of maintaining the animals would also increase. Second, an increase in the length of the holding period might require some municipalities to build more pounds or increase the size of existing pounds. Third, if some humane societies sever relationships with municipalities, they may have to build new pounds and increase the size of the animal control budget. Table 11 shows the estimates of a few cities and counties of the increased costs that might occur if the state enacts a pound release law. The table does not identify the source of the increased expenditure, but it shows that increases might be substantial.

One question these possibilities raise is the extent to which the increased costs of municipal pound operation, which might result from the enactment of a statewide pound release law, would be passed on to the laboratories. What would the statute provide? It could enact set fees for the transfer of animals to laboratories, in which case the fees might offset the increased costs to municipalities, raise more revenue than the increased costs, or raise less revenue than the increased costs. Most likely, if the statute set the fees, the impact would be different in different cities and counties. If the statute, on the other hand, allowed the cities and counties to set fees, the result, from the point of view of the laboratories, might be undesirable; the municipalities might set high fees.

Another possible effect of a state statute is that the present cost of animals purchased from pounds might be doubled or increased even more. Los Angeles County and the City of Los Angeles have holding periods of five days; a state statute might have a holding period of up to 20 days. The statute would affect jurisdictions with pound release ordinances as well as jurisdictions without pound release ordinances and might increase greatly the cost of purchasing animals from existing sources.

7. Would a statewide pound release law be constitutional?

In the case of *Simpson v. City of Los Angeles,* 40 Cal. 2d 271, the California Supreme Court upheld the constitutionality of the Los Angeles ordinance requiring the transfer of animals from pounds to laboratories. The appendix to this report contains an opinion of the California Legislative Counsel that discusses the *Simpson* case and the constitutionality of pound release laws.

8. Would the enactment of a statewide pound release law decrease or prevent dog and cat thefts in California?

The theft of a dog or cat is a crime in California. If the animal is worth more than $200 the crime is grand theft, if less than $200, the crime is petty theft.[73]

Any animal that a laboratory purchases from a dealer may have begun its trip to the laboratory as a stolen animal. Scientists admit that they do not know if an animal they purchase has been stolen, and they presently have no way of identifying, with any precision, an animal they purchase.

Congress enacted a statute aimed against the theft of dogs and cats for laboratory use, on the basis of evidence of the practices of dog and cat dealers in some eastern and midwestern states. Congress concluded that a large-scale traffic in such animals across state lines existed in those states.

Congressional hearings showed that dog and cat thieves do not sell directly to the laboratories. The thieves transfer the dogs and cats, sometimes at auction sales, to legitimate dealers, who then sell the dogs and cats to laboratories.[74]

No one knows, of course, how many, if any, stolen dogs and cats reach laboratories in California, but testimony exists that animal thefts in California are few. The committee asked the chief administrative officers of Los Angeles County and the City of Los Angeles how many complaints about theft of dogs and cats occur annually and how many convictions for stealing dogs and cats have occurred in the last five years. The Los Angeles County Poundmaster and the executive officer of the Department of Animal Regulation, City of Los Angeles, replied that complaints about theft of dogs and cats are extremely rare (perhaps one or two cases a year) and that criminal convictions for this crime are nonexistent in the last five years.[75]

Charles W. Friedrichs, executive secretary of the San Franciso Society for the Prevention of Cruelty to Animals, has written that the theft of dogs and cats for laboratories is more prevalent on the east coast than in California because traveling from one state to another is easier in the east, because centers of population are close to state borders in the east, and because these facts make the arrest and conviction of an animal thief much more difficult.[76] Sigmund T. Rich, D.V.M., of the University of California, Los Angeles, and William Putney, D.V.M., representing the Medical Research Association of California, testified to committees of Congress that little or no dog and cat stealing for laboratories exists in California.[77]

Scientists at the December 6, 1966, hearing of this committee emphasized, as an argument in favor of the enactment of a statewide

[73] California, Penal Code, Sections 487–8, 491; *see also* Civil Code, Sections 654–5.

[74] U.S. Congress, House, Subcommittee on Livestock and Feed Grains of the Committee on Agriculture, *Hearings, Regulate the Transportation, Sale, and Handling of Dogs and Cats Used for Research and Experimentation,* 89th Cong., 1st Sess., 1965, p. 25; U.S. Congress, Subcommittee on Interstate and Foreign Commerce, *Hearings,* 1962, pp. 262–3. Senate, Public Health and Safety Committee, *Hearing,* Los Angeles, pp. 32–3.

[75] Letters from Duane L. Tuttle, executive officer, Department of Animal Regulation, City of Los Angeles, November 18, 1966, and Robert E. Howard, chief, Budget Division, County of Los Angeles, November 16, 1966, to Senator Walter W. Stiern.

[76] Charles W. Friedrichs, "Laboratory Animal Petnapping Bill Signed by President," *Our Animals,* Vol. 60, No. 5 (September–October, 1966), 3.

[77] U.S. Congress, House, Subcommittee of the Agriculture Committee, *Hearings,* 1966, p. 182; U.S. Congress, Senate, Committee on Commerce, *Hearings,* 1966, p. 120.

pound release law, that a plentiful supply of animals from pounds will eliminate the chief motive for stealing dogs and cats: the availability, in the laboratories, of a market for the animals. The scientists argued that opening up all public pounds will provide the laboratories with an abundant supply of animals and that this will save the laboratories from purchasing dogs and cats from dealers.[78]

One objection to this argument is that there are other ways of reducing the pressure of demand for dogs and cats than by making them available from pounds. Any increase in supply—for example, by breeding or using animals other than dogs and cats—might equally serve to decrease the number of animals the laboratories purchase from dealers. It seems unfair to say that the existence of closed pounds is the cause of animal thefts.

The scientists' argument may be objected to on other grounds. It assumes either that thefts for laboratory use exist in California (for which there seems to be no evidence) or that increasing demand will bring about a shortage of animals in California and that thefts will increase as a result. Four factors will work against this result and may prevent its occurrence. First, present supplies of animals may be sufficient for the needs of laboratories. Second, more cities and counties, not relying on humane societies for services, may decide to release dogs and cats to laboratories. Third, supplies may be increased by breeding animals for chronic experiments. Fourth, criminals may be deterred from their activity by the police and by the possibility of going to jail.

9. If the state fails to enact a statewide pound release law, will teaching be handicapped and research slowed down?

Dr. Orland A. Soave, in reply to the committee's request for a clarification of his testimony, wrote,

> In the past five years we have had several projects at Stanford Medical School which have been held in abeyance or could not be carried out because of insufficient supply of dogs and cats. It is a fairly frequent occurrence that some projects involving heart surgery, valve transplants and organ transplants cannot be performed for several weeks while we are awaiting a sufficient supply of animals. In addition, in the fields of neurosurgery-neuropharmacology using cats, projects have been delayed for several months due to an insufficient supply of animals.[79]

In answer to the argument that teaching will be handicapped and research slowed down unless the state enacts a pound release law, witnesses at the committee's hearing in Los Angeles made three arguments:

First, the claimed inadequacy of supply is exaggerated. The laboratories say that the supply is uncertain and fluctuating and that dealers are unreliable. These conditions might well exist simply because of the object being dealt with—live animals. "Seasonal factors contribute greatly to wide variations in the numbers of animals arriving at pounds . . . ."[80]

Second, if the supply is not able to keep up with the demand, the laboratories may pursue any one or a combination of several alterna-

[78] Senate, Public Health and Safety Committee, *Hearing,* Los Angeles, pp. 54, 73–4, 84.
[79] Letter from Orland A. Soave, D.V.M., Director, Animal Care Facility, Stanford Medical Center, November 8, 1966, to Senator Walter W. Stiern.
[80] Senate, Public Health and Safety Committee, *Hearing,* Los Angeles, p. 153.

tives to the enactment of a statewide pound release law: (1) persuade more municipalities to transfer impounded dogs and cats to laboratories, (2) continue and increase reliance on dealers, (3) breed laboratory dogs and cats for chronic experiments, or (4) use animals other than dogs and cats for acute and for chronic experiments.

Third, if the cost of laboratory dogs and cats does increase, that does not mean that teaching will be handicapped and research slowed down. The cost of laboratory dogs and cats is a very small part of the total teaching and research budget; it is unlikely that these government programs will be curtailed by small increments in cost. The following table shows the amount of federal funds appropriated for medical research in the last three years and the amount of the funds coming to California institutions. The amounts shown do not include fellowships, training awards, and grants for the construction of research facilities.[81]

	Fiscal years		
	1964	*1965*	*1966*
	(millions of dollars)		
Total funds for research	$615.0	$715.1	$808.2
State of California	59.7	68.2	76.8

IX. ALTERNATIVES, OPEN TO THE LABORATORIES, TO THE ENACTMENT OF A STATEWIDE POUND RELEASE LAW

1. The laboratories may persuade more cities and counties to permit the transfer of impounded, unclaimed, and unsold dogs and cats to laboratories.

As described above, several California cities and counties, not relying on humane societies to perform services, presently permit laboratories to purchase impounded, unclaimed, and unsold dogs and cats.

A leading representative of the humane movement in the United States has testified that she favors the use of pound animals for acute experiments and that she opposes release legislation only when it applies to pounds operated by humane societies. In her prepared statement submitted to the United States Senate Committee on Commerce, March 28, 1966, Mrs. Christine Stevens said:

"Using impounded animals for nonsurvival experiments under full anesthesia and breeding them for chronic studies is by far the best solution both scientifically speaking and from the standpoint of animals and animal owners."[82]

Mrs. Stevens and Senator Howard W. Cannon (Nevada) exchanged the following remarks on this subject:

"Senator Cannon: . . . Do I understand your testimony that you favor the pounds and the shelters being able to make animals available for one-time experiments; that is, where the animal will be presumably put away as a result of the experiment?

"Mrs. Stevens: Yes. That is to say, one has to be absolutely clear it has to be a painless experiment. The dog would be brought to the laboratory, anesthesized completely, used for any physiological, phar-

[81] Letter from Joseph S. Murtaugh, chief, Office of Program Planning, National Institutes of Health, to Senator Walter W. Stiern, November 21, 1966.
[82] U.S. Congress, Senate, Committee on Commerce, *Hearings*, 1966, p. 133.

macological—there are many, many nonsurvival surgical experiments—and killed while still under anesthesia.

"In other words, he would under no circumstances suffer any pain, and he would have to be used promptly after delivery to the laboratory so that . . . [he] would not be subject to any other discomfort.

"Senator Cannon: Now what is your position with respect to legislation like New York, Illinois, and California have permitting the research institution to make a call on the pound or the shelter for animals that have not been claimed after the holding period?

"Mrs. Stevens: We have no objection to permissive legislation, but we object to compulsory legislation forcing humane societies to turn over animals for the reasons that I have outlined.

"I would point out that my father was head of physiology at the University of Michigan Medical School, and he got dogs always from the Detroit dog pound. They simply sold them there with no law involved at all.

"He sent his men in with a truck. They got what animals he needed and came back." [83]

2. The laboratories may continue and increase purchasing laboratory dogs and cats from dealers.

About 30 percent of the dogs and 26 percent of the cats used in California laboratories are supplied by dealers. The likeliest source for dealers to obtain animals is public pounds; in jurisdictions that do not prohibit the transfer of animals to laboratories, sale to dealers is legal. Dealers may thus function as middlemen between the pounds and the laboratories.

Unquestionably, the cost of laboratory dogs and cats purchased from dealers will increase as a consequence of the new federal law.

3. The laboratories may use dogs and cats bred for laboratory use for chronic experiments, thereby increasing the supply of animals available for acute experiments.

Scientists are in agreement that it is advisable to use dogs and cats bred for laboratory use in chronic experiments.[84] Such animals enable the researcher to reduce variables in age, weight, and genetic background and to obtain greater reliability in results. Psychological investigations are freed from the hazard that an animal has been mistreated; investigations of infectious diseases are freed from the hazard that an animal has been exposed or immunized to disease.[85]

When the economic advantages of dogs and cats bred for laboratory use are counted up, such animals may prove to be no more costly than animals acquired from a pound or a dealer and conditioned for three to six weeks.[86] By using these animals, the laboratory never has to pay personnel while waiting for suitable animals to be obtained. Because of the reduction in variables, a smaller number of animals may be required for an experiment. Few, if any, animals will be found

[83] U.S. Congress, Senate, Committee on Commerce, *Hearings,* 1966, pp. 156–7.

[84] U.S. President's Commission on Heart Disease, Cancer and Stroke, *Report to the President,* Vol. 2 (February 1965), 328; Senate, Public Health and Safety Committee, *Hearing,* Los Angeles, p. 153; Joshua Lederberg, *The Washington Post,* August 21, 1966, p. E7.

[85] Ben E. Sheffy, James A. Baker, and James H. Gillespie, "A Disease-Free Colony of Dogs," *Proceedings of the Animal Care Panel,* Vol. 11, No. 4 (1961), 208.

[86] William S. Fletcher, Allan L. Rogers, and LeRoy F. Erickson, "The Need for a Large Standard Laboratory Dog," *Laboratory Animal Care,* Vol. 16, No. 1 (February 1966), pp. 2–3.

unsuitable or will become ill or die during the course of an experiment. With planning, a researcher can use an animal in more than one experiment.

Still another advantage in using these animals is that laboratories would be relieved of the odium of possibly having used a pet in an experiment, and pet owners would be relieved of anxieties about a pet's having been used.[87]

Many researchers have already turned to this source of animals for use in chronic experiments. The University of Oregon has reported the operation of a successful dog breeding colony.[88] The National Institutes of Health, the chief medical research agency of the federal government, has established both dog and cat breeding colonies for its use.[89] The National Institutes of Health, furthermore, makes grants for projects designed to assist research institutions in breeding dogs and cats for laboratory use.[90] A number of dealers in dogs and cats bred for laboratory use exist in the United States.[91]

Several suggestions have been made for a national program to breed laboratory dogs and cats. The President's Commission on Heart Disease, Cancer and Stroke, for example, recommended appropriations of 20 million dollars a year to improve the supply and quality of laboratory animals.[92] This money would be used for, among other things, the development of animal farms connected with medical and veterinary schools. The commission suggested, " . . . larger farms could be used profitably not only by affiliated schools but also by nearby research institutions and community hospitals." [93]

If laboratories undertook to use in chronic experiments animals bred for laboratory use, the animals now being used in chronic experiments would be available for use in acute experiments, and to that extent the supply of dogs and cats would be increased. In reply to this committee's questionnaire, California laboratories using, in an annual period, a total of 16,126 dogs and 8,217 cats said that 50 percent of the dogs and 73 percent of the cats were used in experiments in which the animal was given a general anesthetic before the experiment and was destroyed before regaining consciousness. The remainder, presumably, were used in chronic experiments, and their number is a measure of the increased supply that would result from breeding dogs and cats for use in chronic experiments.

4. The laboratories may use animals other than dogs and cats in acute and in chronic experiments.

The office of the Los Angeles County Veterinarian is engaged in a project designed to demonstrate the feasibility of using swine in medical research. The project will be completed in the early part of 1967 and will include a study of "drugs for tranquilizing and anesthetics, methods of handling, devocalization, feed and housing, miniature and

[87] Joshua Lederberg, *The Washington Post,* August 21, 1966, p. E7.
[88] Fletcher, pp. 1–8.
[89] U.S. Congress, House, Subcommittee of the Agriculture Committee, *Hearings,* 1966, pp. 28–9.
[90] Letter from James A. Shannon, M.D., Director, National Institutes of Health, to Senator Walter W. Stiern, November 9, 1966.
[91] *Animals for Research,* 1966, pp. 19–20.
[92] *Report to the President,* Vol. 1 (December 1964), pp. 65–6.
[93] *Report to the President,* Vol. 2 (February 1965), p. 331.

domestic swine available, and pertinent information on physiology and anatomy.'' [94]

The University of Oregon Medical School has used goats as experimental animals. They are inexpensive to buy or breed and to maintain, and the size and docility of these animals produces distinct research advantages.[95]

The National Institutes of Health is using significant numbers of farm animals and has found that calves and swine are ''excellent subjects for certain types of heart surgery.'' [96]

Willis L. Culver
Bakersfield, California
December 15, 1966

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[94] Senate, Public Health and Safety Committee, *Hearing,* Los Angeles, p. 58; letter from Warren H. House, D.V.M., Supervisor, Laboratory Animal Inspection and Care, County of Los Angeles, to Senator Walter W. Stiern, November 16, 1966.

[95] William S. Fletcher, Allan L. Rogers, and Sarah S. Donaldson, "The Use of the Goat as An Experimental Animal," *Laboratory Animal Care,* Vol. 14, No. 2 (April 1964), p. 65.

[96] U.S. Congress, House, Subcommittee of the Agriculture Committee, *Hearings,* 1966, p. 28.

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APPENDIX

SENATE RESOLUTION NO. 258
RELATING TO MEDICAL RESEARCH ANIMALS

WHEREAS, California law provides for the humane treatment of animals used in medical research and provides for the enforcement of such laws by the State Department of Public Health; and

WHEREAS, State law provides that cities and counties may adopt ordinances regulating the procurement of animals for medical research from animal pounds; and

WHEREAS, Some cities and counties have adopted ordinances permitting the release of unclaimed dogs and cats from pounds to approved institutions for medical research; and

WHEREAS, Other counties do not permit the release of such animals and as a result thousands of such animals are killed annually in pounds through the state; and

WHEREAS, There are insufficient animals to meet the needs of medical research in the state and the demand for such animals is growing as a result of the establishment of new medical research institutions; and

WHEREAS, There should perhaps be a state animal release law similar to laws enacted in New York, Illinois, Massachusetts, and ordinances enacted in some California counties; now, therefore, be it

Resolved by the Senate of the State of California, That the Senate Rules Committee is directed to assign to an appropriate factfinding committee a study of the problem of animals for medical research, with such committee directed to report thereon not later than the fifth legislative day of the 1967 Regular Session.

Introduced June 14, 1965.

STATE OF CALIFORNIA

OFFICE OF LEGISLATIVE COUNSEL

Sacramento, California
November 18, 1966

HONORABLE WALTER W. STIERN
2901 Skyline Boulevard
Bakersfield, California 93305

POUND RELEASING OF ABANDONED ANIMALS FOR RESEARCH—#8313

Dear Senator Stiern:

You have asked three questions, regarding animals, which we shall answer in series.

QUESTION NO. 1

Are pound release laws constitutional?

We have assumed, for purposes of this opinion, that by "pound release laws," you refer to laws which provide for the release of un-

claimed animals by public agencies to private research laboratories and institutions for use in medical research.

OPINION AND ANALYSIS NO. 1

Whether or not any particular law is constitutional which provides for the release of unclaimed animals by public agencies to private research laboratories and institutions for use in medical research will, of course, depend upon the provisions of such law.

We think that it is, however, clear from the case of *Simpson* v. *City of Los Angeles,* 40 Cal. 2d 271, that legislation can be enacted, that would be constitutional, which would provide for the release of unclaimed animals by public agencies to private research laboratories for use in medical research (see also *Massachusetts S.P.C.A.* v. *Commissioner of Public Health* (Mass.), 158 N.E. 2d 487, and 4 Am. Jur. 2d, Animals, Sec. 48).

In the *Simpson* case the California Supreme Court upheld the constitutionality of an ordinance of the City of Los Angeles which provided that the city health officer could certify, upon their request, institutions of learning, hospitals, research laboratories or allied institutes, for permission to use, humanely, unclaimed impounded animals for the good of mankind and the increase of knowledge relating to the cause, prevention, control and cure of disease. The ordinance required the Department of Animal Regulation of the City of Los Angeles to surrender unclaimed impounded animals for such purposes when applied for by the institutions certified by the health officer.

Four plaintiffs, whose animals had been surrendered to such institutions, challenged the constitutionality of the regulation on various grounds.

The *Simpson* case upheld the constitutional authority for a municipality to impound dogs and provide for their destruction or other disposition as a valid exercise of the police power to the state (at pp. 278–279).

The *Simpson* case also held that the surrender of the animals to private research laboratories and institutions is not a gift of public property as prohibited by the California Constitution, since the animals are to be used for a public purpose (at p. 282).

Therefore, we think that it is clear that legislation can be enacted, that would be constitutional, which would provide for the release of unclaimed animals by public agencies to private research laboratories and institutions for use in medical research.

QUESTION NO. 2

What merit is there to the argument that, because the animals released may be private property, a statute which provides for the release of unclaimed animals by public agencies to private research laboratories and institutions for use in medical research provides for an illegal transfer of ownership of the property?

OPINION AND ANALYSIS NO. 2

The plaintiffs in the *Simpson* case argued that the taking and transferring of their animals was in violation of the due process clause of the United States Constitution. The elements of due process that must be observed before an animal can be considered abandoned were discussed at length in the case. The court noted that, where possible, actual

notice should be given to the owners upon the impounding of their dogs, and there should be a period of time for which the owner of an impounded dog could rescue his property. The city ordinance in the *Simpson* case provided that no dog could be released until after a five-day period had elapsed, and if the dog was tagged, the owner was entitled to actual notice before the five-day period could commence. On this point the court concluded:

> "It is clear, however, that when dogs have been lawfully impounded under the police power and have become subject to disposition under the terms of the ordinance by any of the means noted above, private property rights in such dogs must, in the interest of public welfare, be treated as having been terminated." (*Simpson* v. *City of Los Angeles*, supra, at pp. 279–280)

It is therefore our opinion that when the elements of due process of the law are observed (for example, notification to the owners and a waiting period), animals may be deemed abandoned and disposed of in a manner the state may consider appropriate for the furtherance of the health and welfare of the community (see 4 Am. Jur. 2d, Animals, Sec. 48), and Soave, An Introduction to Veterinary Law (W. B. Saunders Company, Phila. (1962), pp. 21–22).

Thus, since at the time of disposition the animals are no longer private property, we do not think that there is any merit to the argument in question.

QUESTION NO. 3

Does the State of California make it illegal to abandon animals?

OPINION AND ANALYSIS NO. 3

The California Penal Code expressly provides that the willful abandonment of a dog or cat is a misdemeanor (Sec. 597s, Pen. C.).

Section 597f of the Penal Code further provides, in part, that:

> "597f. Every owner, driver, or possessor of any animal, who shall permit the same to be in any building, enclosure, lane, street, square, or lot, of any city, city and county, or judicial district, without proper care and attention, shall on conviction, be deemed guilty of a misdemeanor. And it shall be the duty of any peace officer, officer of the humane society, or officer of a pound or animal regulation department of a public agency, to take possession of the animal so abandoned or neglected and care for the same until it is redeemed by the owner or claimant, and the cost of caring for such animal shall be a lien on the same until the charges are paid . . . ."

Very truly yours,

George H. Murphy
Legislative Counsel
By Stanley M. Lourimore
Deputy Legislative Counsel

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REPORT OF THE SENATE FACT FINDING COMMITTEE ON PUBLIC HEALTH AND SAFETY

Members of the Committee

Senator Walter W. Stiern, *Chairman*

Senator Jack Schrade, *Vice Chairman*

Senator Frank S. Petersen (Retired)

Senator Aaron W. Quick

Senator Alvin C. Weingand

Willis L. Culver, *Committee Counsel*

Gloria McLean, *Committee Secretary*

DENTAL DISCIPLINE, MANPOWER, AND HEALTH IN CALIFORNIA

JANUARY 1967

Published by the

SENATE

OF THE STATE OF CALIFORNIA

ROBERT H. FINCH
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate

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LETTER OF TRANSMITTAL

January 17, 1967

Hon. Robert H. Finch, *President,*
and Members of the Senate

Gentlemen:

The Senate Fact Finding Committee on Public Health and Safety herewith submits its report on dental discipline, manpower, and health in California.

Respectfully submitted,*

Walter W. Stiern, *Chairman*
Jack Schrade, *Vice Chairman*
Aaron W. Quick
Alvin C. Weingand

* Senator Frank S. Petersen took no part in the preparation of this report.

I. CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

1. The committee has concluded that no legislation need be enacted to broaden the jurisdiction of the Board of Dental Examiners in cases of unprofessional conduct.

2. The committee has concluded that the board's authority to invoke appropriate remedies in disciplinary cases is adequate.

3. The committee has concluded that no need exists to establish district review committees of the Board of Dental Examiners to hear disciplinary cases.

4. The committee recognizes that Section 1671 of the Health and Safety Code, relating to mental illness, may be deficient, and recommends that the Board of Dental Examiners and the professional dental associations give attention to revision of the section.

5. Concerning the proposal to license the faculty of dental schools to practice without having passed the state examination, the committee has concluded that the benefits of the proposal are too small and speculative to justify such a serious change in state policy.

6. The committee has concluded that the issue of using the National Board Examination in California and the issue of compensation of board members should be dealt with separately.

The use of the National Board Examination will facilitate the licensing of persons seeking to practice dentistry in California and will fully preserve the public interest in a high standard of dental practice. The committee recommends favorable action on any legislation that the board may feel is necessary to permit the use of the National Board Examination in California.

Presumably the compensation of board members for grading written examinations is for time they spend grading written examinations and is not for their service on the board; if they do not spend time grading papers, no harm results from the fact that they do not receive income for work they do not do. The committee recommends that the Board of Dental Examiners and the professional dental associations give further consideration to whether service on the board should be a part-time paid employment.

7. The committee recommends that the director of the Department of Professional and Vocational Standards investigate the feasibility and cost of establishing a program to evaluate the examinations of all the boards in the department, to see how well the examinations serve their function of assuring that the examination-taker is qualified to practice a particular business or profession at a level high enough to protect the health and safety of the public. The committee recommends that the Department of Professional and Vocational Standards report the results of its study, together with conclusions and recommendations, to the 1968 Legislature.

II. INTRODUCTION

As part of a continuing study of the state licensing boards that govern the health professions in California, the committee called a hearing on September 7, 1966, in Los Angeles [1] on the Dental Practice Act and the supply of dentists in California. The chief subjects covered at the hearing are discussed in this report, which includes the committee's conclusions and recommendations.

[1] California Senate, Fact Finding Committee on Public Health and Safety, *Disciplinary Proceedings Under the Dental Practice Act, and Increasing the Supply of Dentists in California* (Los Angeles, September 7, 1966).

III. JURISDICTION AND PROCEDURES OF THE BOARD OF DENTAL EXAMINERS IN DISCIPLINARY AND MENTAL ILLNESS CASES

A. Does the Board of Dental Examiners Have Adequate Authority to Obtain Jurisdiction for Disciplinary Purposes Over Licentiates Who Engage in Unprofessional Conduct?

The committee's purpose in raising this question was to find out if the Board of Dental Examiners can obtain jurisdiction, for disciplinary purposes, over licentiates whose behavior as a dentist, though less than criminal, endangers the public.

All witnesses agreed that the board's jurisdiction in disciplinary cases is adequate. The board has jurisdiction over licentiates whose conduct amounts to gross ignorance, inefficiency in his profession, habitual intemperence, or gross immorality.[2]

The committee has concluded that no legislation need be enacted to broaden the jurisdiction of the Board of Dental Examiners in cases of unprofessional conduct.

B. Does the Board of Dental Examiners Have Adequate Authority to Invoke Appropriate Remedies When a Licentiate Is Found Guilty of Unprofessional Conduct?

The committee raised this question to find out if the board's powers are sufficiently flexible.

The Dental Practice Act gives the board the authority to take the following actions against persons violating the act[3]:

1. Revocation of license.
2. Suspension of license.
3. Reprimand.
4. Probation.

The committee has concluded that the board's authority to invoke appropriate remedies in disciplinary cases is adequate.

C. Should the Legislature Establish District Review Committees of the Board of Dental Examiners to Hear Disciplinary Cases?

This proposal grew out of the committee's investigation, during the 1963–65 interim, of the Medical Practice Act; the committee concluded, as a consequence of that investigation, that the Board of Medical Examiners should establish five committees, composed of five men each, appointed by the Governor, to hear disciplinary cases.[4]

Dr. J. C. Almy Harding, Chairman of the Legislative Committee of the Southern California State Dental Association, pointed out to the

[2] California Health and Safety Code, Sections 1670, 1680(7), and 1680(8).
[3] California Health and Safety Code, Section 1670.
[4] California Senate, "Control of Unprofessional Medical Conduct," *Report of the Senate Fact Finding Committee on Public Health and Safety* (February 1965), pp. 10–23.

committee that the disciplinary problems of the medical and the dental professions are different. The number of physicians in California is more than twice as great as the number of dentists.[5] Physicians treat all areas of the body, while dentists treat the mouth only. Because of these differences dentists have far fewer disciplinary problems than do physicians; only a small number of complaints are so serious as to come to the attention of the Board of Dental Examiners. From February 1, 1961, to July 19, 1966, for example, the board held 11 hearings in disciplinary cases, and the Office of Administrative Procedure, pursuant to the board's request, held 26 hearings, a total of 37 hearings in a five-year period.[6]

Because of these differences, the board is not burdened with disciplinary cases and has time to hear all cases that require its attention.

The committee has concluded that no need exists to establish district review committees of the Board of Dental Examiners to hear disciplinary cases.

D. Does the Board of Dental Examiners Have Adequate Authority to Deal With Licentiates Suffering From Mental Illness?

Section 1671 of the Health and Safety Code provides that: (1) the adjudication of insanity or mental illness or (2) the voluntary commitment or admission to a state or federal hospital for mental illness suspends the right to practice of any licensee of the Board of Dental Examiners. Dr. Clifford F. Loader, President of the Board of Dental Examiners, testified, on behalf of the board, that this section is deficient in that it does not require private hospitals to notify the board when a licentiate is admitted for treatment of mental illness.

Examination of Section 1671 discloses that it operates by making the suspension of the license automatic upon the occasion of either of two events: (1) the adjudication of mental illness or (2) the voluntary commitment of the licensee to a state or federal hospital for mental illness. The board's proposal—to require private hospitals to notify the board when a licentiate of the board is admitted for treatment of mental illness—does not fit into Section 1671's pattern. When a person goes to a private hospital for treatment of mental illness, no clearly identifiable event marks the occasion. Who decides that the patient is mentally ill? Not necessarily the patient, as in a voluntary commitment to a state or federal hospital. Not a court, as in the adjudication of mental illness. The board's proposal would require a judgment by private individuals at the hospital that the patient is mentally ill. It would certainly be a violation of the licensee's constitutional right to due process of law for the board automatically to suspend his license upon the receipt of notice from a private hospital. Nor can the board act on the basis of evidence submitted to it, for Section 1671 contains no definition of mental illness. This is the chief weakness of Section 1671—that it contains no definition of mental illness. Only after such a definition is written into the Dental Practice Act can the board attack the problem of notice from private hospitals.

[5] California Department of Professional and Vocational Standards, *1965 California County Distribution of All License Classifications* (Sacramento, 1966), pp. 31, 41.

[6] Letter from Victor A. Hill, Executive Secretary, Board of Dental Examiners, to Willis L. Culver, October 3, 1966.

The committee recognizes that Section 1671 of the Health and Safety Code, relating to mental illness, may be deficient, and recommends that the Board of Dental Examiners and the professional dental associations give attention to revision of the section.

IV. INCREASING THE NUMBER OF DENTISTS IN CALIFORNIA

A 1964 study of the Coordinating Council for Higher Education [7] found that, to maintain the 1961 ratio of dentists to population, California will have to increase the number of dentists in the state at greater than the existing rate of increase. The study conservatively estimated that in 1975 demand will exceed supply by 680 to 780 dentists in California. This estimate was based on the 1961 ratio of one dentist for every 1,576 persons in California and was not based on the need for dentists. Evidence exists that, if the need for dental care were transformed into effective demand, the present number of dentists in California would be far too few to meet the demand.[8]

The 1964 study of the Coordinating Council for Higher Education made several proposals for increasing the number of dentists in California.

A. The Coordinating Council for Higher Education recommended that: "In order to promote recruitment and retention of faculty, all private and public dental schools in California should offer salaries and other benefits which approximate the average net income of practicing dentists. The dental schools might also consider facilitating opportunities for a limited amount of private faculty practice at the schools and their affiliated institutions." [9]

A question posed by this recommendation is whether the state should allow members of dental school faculties to practice without having passed the state examination.

Dr. Willard B. Spalding, director of the Coordinating Council for Higher Education, explained to the committee that this proposal aimed at aiding the California dental schools to produce the maximum number of graduates with the best possible preparation. Increasing the income of dental faculty through part-time practice would increase the attraction of teaching for qualified dentists and would "bring added reality to . . . instruction." [10]

Dr. Clifford F. Loader, president of the Board of Dental Examiners, said that the board "would not be adverse to enactment of a law whereby the board would be authorized to issue a special or temporary license for faculty of dental schools." [11] He indicated that the board would follow the recommendations of the professional associations on this issue. He added that this special privilege should be granted to a dentist only while he is on the faculty.

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[7] California Coordinating Council for Higher Education, *Dental Education and Manpower* (Sacramento and San Francisco: December 1964).
[8] University of California, Institute of Governmental Studies, "Fluoridation in California: An Unresolved Public Policy Issue," *Public Affairs Report*, Vol. 7, No. 5 (October 1966); *Dental Education and Manpower*, p. 11.
[9] *Dental Education and Manpower*, p. 7.
[10] Senate Fact Finding Committee on Public Health and Safety, Los Angeles, p. 8.
[11] Senate Fact Finding Committee on Public Health and Safety, Los Angeles, p. 23.

Dr. Charles T. Smith, representing the deans of the five California dental schools, supported the proposal. He said that the special license should be granted only to associate professors, professors, and persons of higher rank; that the license should be granted to full-time faculty only; and that the place of practice of the person holding such a license should be restricted to the teaching institution and its affiliated institutions.

Assuming that faculty members do obtain this special license, Dean Smith argued against requiring the licensee to restrict his practice to fields in which he is a specialist. Dean Smith said that many specialties do not have certifying boards; consequently, it would be difficult or impossible to define the precise area of permissible practice. Examples of such fields, he said, are restorative dentistry, oral medicine, and oral diagnosis.

Senator Stiern raised the question: If it is appropriate to allow faculty members to practice without passing the state examination, why restrict the place where he may practice, as is proposed, to the school and its affiliated institutions? Dean Smith replied that, in the first place, it would not be feasible for a full-time faculty member to practice outside the school; he certainly could not afford to open his own office for the few hours each week that he might practice. In the second place, working in the school and its affiliated institutions would satisfy a faculty member's motives for wanting to engage in part-time practice: (1) to supplement his income and (2) to stay in the forefront of his field of specialization by going beyond routine teaching procedures.

Dr. J. C. Almy Harding, representing the two principal dental associations in the state—the California Dental Association and the Southern California State Dental Association—opposed enactment of any statute permitting faculty members of dental schools to practice without passing the state examination. His four arguments against the proposal were as follows:

1. Faculty licensing is not necessary: The difference between the average professorial salary and the income of the average private practitioner is not great; moreover, not all the dental schools in California agree that special licensing for faculty members would be beneficial.

The salary of a full-time professor at the University of California, San Francisco, School of Dentistry ranges from $16,599 to $24,099; the salary of a full-time professor at the University of California, Los Angeles, School of Dentistry ranges from $18,000 to $22,100. These are actual salaries being paid in the 1966–67 fiscal year.[12]

According to Dr. J. C. Almy Harding, the median net income of dentists in private practice in 1964 in the nation was $18,000; in the far west, $21,400; in California, $23,000; and in Los Angeles, $20,000.

(In evaluating whether a faculty member is receiving as much income as a dentist in private practice, one must take into account the fact that faculty members receive fringe benefits not usually available to dentists in private practice. A faculty member's retirement fund, for example, comes partly from his salary and partly from contributions by his employer.)

[12] Information in a letter from Keith Sexton, Associate Director, Coordinating Council for Higher Education, to Willis L. Culver, December 19, 1966.

Dr. Harding used as evidence of the lack of need for special faculty licensing the fact that not all of the California dental schools are of the same opinion about the benefits that will come from the proposal. He said, "Of these [five] schools, two do not feel that [enactment of the proposal] would make a great deal of difference. One feels that it would be helpful. One thinks that it might be very helpful. And one needs it a great deal." [13]

Dr. Clifford F. Loader mentioned this split of opinion among the dental schools as a reason why the Board of Dental Examiners did not wish to take a positive stand on this issue.

2. Licensing faculty members who have not passed the state examination will lower California's dental standards.

Good reasons may exist why a new faculty member from out of state might find it difficult to pass the California examination. He may have practiced in a highly specialized field for many years before coming to California, and he may not have retained a high degree of proficiency in some fields. Dr. Harding argued that this circumstance should not excuse the man from meeting California's high standards of practice. If the proposal is enacted, he will be fully licensed, and the citizens of the state should be able to expect him to be fully qualified and to have demonstrated his qualification by passing the California examination.

3. Licensing faculty members who have not passed the state examination is unfair to other dentists who have.

The proposal for faculty licensing grants a special privilege to one group of men because of their employment in a dental school. It is unfair to grant this privilege to one group while denying it to others who may be equally talented and whose services may be equally needed by institutional employers.

4. A good alternative to the proposal exists: Employ men who are capable of passing the California examination.

During the two-year period ending October 1, 1965, 1,239 persons passed the California examination and 398 failed.[14] The dental schools should be able, argued Dr. Harding, to fill the 12 to 18 vacant positions on their faculties with men who are capable of passing the California examination.

Concerning the proposal to license the faculty of dental schools to practice without having passed the state examination, the committee has concluded that the benefits of the proposal are too small and speculative to justify such a serious change in state policy.

B. The Coordinating Council for Higher Education recommended that: "The Legislature be advised to authorize a study by an interim committee in cooperation with the Board of Dental Examiners, representatives of the California Dental Associations, and the deans of California dental schools, to explore possible statutory changes which would provide, as one of the means for meeting the requirements of the written examination, recognition of the National Board Certificates by

[13] Senate Fact Finding Committee on Public Health and Safety, Los Angeles, p. 86.
[14] California Board of Dental Examiners, *Dental Practice Act of California* (Sacramento, 1965), p. 7.

the California State Board of Dental Examiners, to report its findings to the 1967 session." [15]

Dr. Charles T. Smith, testifying on behalf of the dental schools in support of using the National Board Examination as a means of meeting the requirements of the written examination in California, said that as of September 7, 1966, 42 states recognized the National Board Examination and that 11 of them make the National Board Examination the only acceptable written examination.

The Council of the National Board of Dental Examiners, established by the American Dental Association in 1928, administers the examination. The council appoints 13 groups, each composed of four or five members from different parts of the nation, to write the examinations. The council tries to make the examination representative of what is being taught in dental schools throughout the nation.

The examination consists of two parts. Students generally take the first part of the examination at the end of the second year of dental school and take the second part of the examination at the end of the fourth year of dental school.

The dental schools of California, the professional associations, and the Board of Dental Examiners all favor the use of the National Board Examination as a means of passing the California written examination. Dr. Clifford F. Loader, President of the Board of Dental Examiners, told the committee that the Board of Dental Examiners, at its August 28, 1966, meeting, approved the use of the National Board Examination in California and that the board will undertake to promulgate precise rules on the matter. The Joint Executive and Legislative Committees of the California Dental Association and the Southern California State Dental Association, on August 6, 1966, approved the use of the National Board Examination in California.

Use of the National Board Examination in California raises another issue of importance—whether the members of the Board of Dental Examiners should be compensated for service on the board. At the present time, most of the income of board members comes from remuneration for reading the California written examination; this income will be eliminated if California recognizes the National Board Examination.

The Board of Dental Examiners recommended to the committee that the Legislature provide a salary for service on the board to compensate for the loss of income that will result from the use of the National Board Examination. Dr. Clifford F. Loader, representing the board, recommended that the annual salary be set at $4,000, since that was the amount that he received for grading written examinations in 1965.

The committee has concluded that the issue of using the National Board Examination in California and the issue of compensation of board members should be dealt with separately.

The use of the National Board Examination will facilitate the licensing of persons seeking to practice dentistry in California and will fully preserve the public interest in a high standard of dental practice. The committee recommends favorable action on any legislation that

[15] *Dental Education and Manpower*, p. 7.

the board may feel is necessary to permit the use of the National Board Examination in California.

Presumably the compensation of board members for grading written examinations is for time they spend grading written examinations, and is not for their service on the board; if they do not spend time grading papers, no harm results from the fact that they do not receive income for work they do not do. The committee recommends that the Board of Dental Examiners and the professional dental associations give further consideration to whether service on the board should be a part-time paid employment.

C. The Coordinating Council for Higher Education recommended that: "The State Board of Dental Examiners contract with a qualified individual or individuals who will validate all parts of the licensure examination, and set up a system of continuing statistical records about all parts of the licensure examination." [16]

The committee's interest in this recommendation arose out of testimony at the September 7, 1966, hearing on the use of goldfoil fillings in the practical examination of the Board of Dental Examiners. On this question, the 1964 study of the Coordinating Council for Higher Education concluded, "The question of which classes of cavities provide adequate tests of proficiency in the use of goldfoil can be answered only by professional judgment. When professional judgments vary, as they do in respect to classes of cavities to be used, examinations should not be narrowed to a single point of view. To do otherwise is to place the governmental power to license behind a particular point of view and so to interpose a substantial barrier to licensing graduates who were prepared according to the best professional judgment of the faculty of their school." [17]

This conclusion, together with other remarks in study,[18] indicated to the committee that some rigorous evaluation of examinations, not only in dentistry but in all of the boards of the Deapartment of Professional and Vocational Standards, may be wise.

The committee recommends that the Director of the Department of Professional and Vocational Standards investigate the feasibility and cost of establishing a program to evaluate the examinations of all the boards in the department, to see how well the examinations serve their function of assuring that the examination-taker is qualified to practice a particular business or profession at a level high enough to protect the health and safety of the public. The committee recommends that the Department of Professional and Vocational Standards report the results of its study, together with conclusions and recommendations, to the 1968 Legislature.

[16] *Dental Education and Manpower*, p. 7.
[17] *Dental Education and Manpower*, p. 18.
[18] *Dental Education and Manpower*, pp. 16–17.

V. FLUORIDATION

Dr. Clifford F. Loader, President of the Board of Dental Examiners, testified, "Dental disease is our most universal health problem with 95 percent of the population affected by tooth decay. It is much cheaper and much quicker to take steps now to reduce dental decay than it is to educate more dentists to care for the dental needs of this state. The only reasonable solution to this mounting problem is fluoridation of the public water supply. After 21 years of research, it has been demonstrated that dental decay can be reduced by as much as 65 percent through fluoridation of the water supply.

"In a momentous fluoridation first, the State of Connecticut on May 28, 1965, passed a law requiring all towns of 20,000 or more to fluoridate their water supplies.

"Deadlines in the law require fluoridation of water utilities serving populations of 50,000 or more by January 1967. Cities of 20,000 or more have until October 1967.

"I recommend that California follow the example of the State of Connecticut and pass a similar law in 1967. Of all the topics being discussed today, this one would have the greatest effect for good and is the simplest and least expensive way to solve the dental health problems of the State of California." [19]

[19] Senate Fact Finding Committee on Public Health and Safety, Los Angeles, pp. 24–5.

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REPORT OF THE

SENATE FACT FINDING COMMITTEE ON
REVENUE AND TAXATION

AN EVALUATION OF THE PROPOSAL TO ACCOUNT FOR STATE REVENUES ON AN ACCRUAL BASIS

MEMBERS OF THE COMMITTEE

Virgil O'Sullivan, *Chairman*

"J" Eugene McAteer, *Vice Chairman*
Hugh M. Burns
James A. Cobey
Randolph Collier
Richard J. Dolwig
Luther E. Gibson
Donald L. Grunsky
John W. Holmdahl
John F. McCarthy
George Miller, Jr.
William Symons, Jr.
Stephen P. Teale

Dr. William K. Schmelzle, *Consultant*



Published by the

SENATE
OF THE STATE OF CALIFORNIA

Glenn M. Anderson
President of the Senate

Hugh M. Burns
President pro Tempore

Joseph A. Beek
Secretary

LETTER OF TRANSMITTAL

Senate Fact Finding Committee
on Revenue and Taxation
Sacramento, March 23, 1966

The Honorable Glenn M. Anderson
President of the Senate

Dear Sir: The Senate Fact Finding Committee on Revenue and Taxation created pursuant to Section 12.5 of the Standing Rules of the Senate and pursuant to Senate Resolution 301.11 herewith submits a report entitled *An Evaluation of the Proposal to Account for State Revenues on an Accrual Basis.*

This report is part of a series of reports which the committee expects to issue during the interim period 1965–67.

The report constitutes an analysis of the proposal to place the accounting for state revenues in California on an accrual basis comparable to that presently used in accounting for state expenditures.

Respectfully submitted,

"J" Eugene McAteer
Hugh M. Burns
James A. Cobey
Randolph Collier
Richard J. Dolwig
Luther E. Gibson
Donald L. Grunsky
Virgil O'Sullivan, Chairman
John W. Holmdahl
John F. McCarthy
George Miller, jr.
William Symons, jr.
Stephen P. Teale

AN EVALUATION OF THE PROPOSAL TO ACCOUNT FOR STATE REVENUES ON THE ACCRUAL BASIS

INTRODUCTION:

For two decades the consultants to first the Senate Interim Committee on State and Local Taxation and secondly, the Senate Fact Finding Committee on Revenue and Taxation have continuously pointed out the fact that a confusion in the financial controls (both accounting and budgeting) used by every level of government in California existed making the reporting of the true financial condition of cities, counties, school districts and special districts as well as the state itself open to serious question. Counties finally were brought under legislation requiring them to report to the State Controller with standardized budget formats. Cities and many special districts have, however, been even more remiss and resisted the application of standard and uniform methods for reporting their financial transactions. Nor has the state itself adopted a financial control system which leads to the uniform formulation of judgments of its fiscal position.[1]

The results of this autonomy of fiscal control systems are quite obvious. Meaningful comparisons of the fiscal positions of the state and its multitude of local government jurisdictions have been virtually impossible to make over the past 20 years. No one has known accurately the financial positions of the state or of many of its local subdivisions.

Comparisons of the fiscal units of the state have been impossible on a meaningful basis; deficits and surpluses have been over- and understated and the real direction of the state's public finances have been, at best, grossly over- and under-stated and estimated.

This confusion has arisen from several sources. First, the state has kept its books on the spending side on what is called an "accrual basis." While revenue receipts have been accounted for on a "cash basis." Thus there has been an inexcusable difference in accounting controls for years despite the fact that for 20-odd years, consultants to the various Senate committees on state and local fiscal affairs have advised against continuation of these practices. The result of this malpractice has led to meaningless comparisons and trend developments with respect to the real conditions existing in the general fund budgets of these governments.

Secondly, the situation with respect to local levels of government has been even more severe. While counties are required to file standard budget forms with the State Controller, cities and many special districts for example, are not. The result is a confusing myriad of financial condition statements rendering meaningful comparisons of city and other governmental unit finances practically useless.

But to return to the problem of state accounting and budgeting, as has already been indicated, the state follows an untenable admix-

[1] See reports of the Senate Interim Committee; viz., "State and Local Government in California," et seq., 1945 through 1954.

ture of accounting for revenues on one basis (cash) and for expenditures on another basis (accrual). The result is obvious. It amounts to something like keeping receipts in a cigar box in actual cash as against keeping ledger accounts for the expenditures made either through the budget or by special appropriations. Thus expenditures are constantly running ahead of receipts and the result is obvious. Deficits have been continuously overstated.

To bring the state's accounting control into a proper perspective, it is recommended that revenue accounts be kept on the same accrual basis as expenditure accounts. This would make for greater consistency and uniformity in accounting for the state's General Fund annual condition and allow for meaningful evaluation of trends in the General Fund's condition over the years.

The following sections of this report deal with an explanation of this change in accounting and the merits and demerits thereof. They also show what the impact of such a change for the better would mean with respect to our annual General Fund needs and the true deficits which we shall have to meet to keep our general government support items in balance.

THE REVENUE ACCRUAL PLAN FOR CALIFORNIA STATE GOVERNMENT

Although the accounting of state expenditures had gradually been brought under an accrual system over the years, little effort has been made to bring about a similar adjustment to the state's revenues. In fact, other than for interest earned on investments, the entire revenue structure remains basically on the old cash basis of accounting. Since this resulting imbalance creates an artificially conservative reporting of the state's assets and surpluses, a correction of this imbalance has become much more necessary in recent years with the exhaustion of large reserves and surpluses that built up during the 1940's.

Accrual of state revenues requires the employment of relatively sophisticated techniques of measurement which require, in turn, prompt and accurate accumulation of financial data. Even a few years ago, before the state had developed its present computer based data processing system, it would not have been practicable to use the accrual basis. Now, however, the means are available by which accurate data can be accumulated rapidly enough to insure the practicability of accruing revenues without introducing the danger of delays in the present time schedule for year end closing of the accounting records and the preparation of annual reports.

Feasibility Review by Independent Consultants:

Given the ability which automated data processing has provided to departmental accounting offices, the Department of Finance decided to explore the possibility of modernizing the recording of revenues as rapidly as possible. Contracts with three independent accounting and management firms were entered into to study the state's accounting system to determine if the accrual system for revenues was both feasible and proper. These firms furnished consultants expert in the areas of governmental accounting theory, the interrelationships of accounting and budgeting practice in the various state agencies concerned, and the practical application of governmental accounting by the Certified Public Accountant profession.

After thorough review of the major revenue sources and the laws which govern them, the pattern of collections, and the extent of uncollectible items, these consultants found the accrual basis of accounting revenues to be both appropriate and feasible.[2]

They also emphasized that the proposed change to accrue revenues would provide internal consistency to the state's accounting system. At the present time, the State Controller reports revenues on a modified cash basis except for interest earned on investments while expenditures are generally reported on the accrual basis. This internal inconsistency would be corrected by adopting an accrual basis for reporting revenues as well as expenditures. Opportunities to improve the flow of cash would be pointed up by recording accounts receivable and accrued revenues, so it is reasonable to anticipate more effective management of the state's resources as a by-product of the adoption of the accrual basis of accounting for revenues.

They concluded that the best interests of the state would be served by adopting the proposal to modernize the state's accounting by recognition of revenue when earned as well as recognizing expenditures when incurred. The full disclosure of the state's resources as well as its obligations should contribute materially to the understanding of those who must rely upon the state's financial statements for information to guide them in enacting legislation, in establishing policy, and in executing such policy.

Recommended Criteria for Accrual of Revenues:

The consultants also recommended that the feasibility of using the accrual method of accounting for revenues, the extent to which each revenue is accrued, and the method employed in making the accruals should be governed by all of the following criteria:

1. *Earned*

   Revenues should be accrued when earned. Revenues are earned by the state when the events which give rise to the creation of an obligation to the state occur.

2. *Measurable*

   Revenues can be accrued only if the amounts which have been earned can be definitely determined or estimated with reasonable accuracy.

3. *Available*

   Only such accrued revenues as will be available to meet the obligations of a particular budget year can be treated as resources for that period. Accordingly revenues which have been earned and can be measured should be fully accrued, but the portion on which collections will extend beyond a reasonable period should be reflected in a reserve or restricted portion of surplus.

These criteria should be applied *consistently*. The same tests as to *when earned, if measurable,* and *when available* must be used on *all* significant revenue sources and applied consistently from one accounting period to the next so that there is reliable comparability as to revenue sources and as to accounting periods. As mentioned earlier, the system for accruing revenues should be consistent with the system for accruing expenditures.

[2] See Report to Department of Finance, Feb. 3, 1966. Copies of the consultants report have already been circulated to members of the committee.

The accrual procedures should be designed to assure accurate and full disclosure of the revenues accrued. Appropriate allowances must be established for amounts which are uncollectible, and the amounts which will not be available until a future budget period should be reserved for that period. These procedures should replace the current practice of fully reserving accounts receivable on balance sheets of governmental cost funds. When judgment factors are employed in establishing estimates and allowances they should be applied conservatively.

The accrual procedures need not extend to revenue items which are not large enough to be *material* to the full and complete disclosure of the state's financial condition and its operations.

Legal Restrictions:

Although there is no general prohibition against accrual of revenues, two specific taxes were felt to be in need of legal adjustment in order to apply the above criteria properly. The Insurance Tax law contains language specifying that it "shall be revenue of the fiscal year in which received." To properly account this revenue for the period when earned, it would be necessary to delete the quoted language.

The second adjustment involves the Bank and Corporations Tax where some confusion exists between the "income year" and the "privilege year." A strict application of accounting principles would require almost the entire tax to be deferred until it is earned during the "privilege year," even though collected in prior periods. The consultants felt that the law should eventually be changed to make the "privilege year" coincide with the "income year"—a change that would permit the practical application of the recommended criteria to this tax. The only other expedient would be statutory authorization to account these receipts as earned by the state in the "income year" when they are collected. Since the correlation of the "income" and "privilege" year required more study and the solution of several complex problems, it was felt advisable to provide the latter statutory authority to account these revenues when received.

As no other legal vehicle now exists whereby the Legislature can expressly approve or disapprove the decision to accrue revenues, an additional policy statement should appropriately be contained in the bill which would provide the two legal adjustments noted above. The following language for such a policy statement is suggested to read:

> The Legislature finds and declares that the best interests of the state require the adoption of an accounting system which provides for recognition of revenues when earned as well as recognition of expenditures when obligations are incurred. It is thereby declared to be the policy of the State of California that all revenues that will be payable into the State Treasury be accounted on an accrual basis to the fullest extent practicable.

Summary of Revenues to Be Accrued:

After applying the criteria recommended by the consultants to all significant revenue accounts of the state, together with determination of proper allowances for uncollectible items, the Department of Fi-

Accrued Revenues—June 30, 1967

	Estimated revenue receivable June 30, 1967			Estimated allowances for uncollectible June 30, 1967	Estimated net adjustment June 30, 1967
	Accrued revenue	Accounts receivable	Total		
GENERAL FUND					
Major Taxes					
Alcoholic Beverage Control Taxes					
Excise Tax on Beer and Wine	$1,300,000	$3,000	$1,303,000		$1,303,000
Excise Tax on Distilled Spirits	5,350,000	35,000	5,385,000		5,385,000
Cigarette Tax	3,350,000	1,000	3,351,000		3,351,000
Inheritance and Gift Taxes	12,500,000	16,000,000	28,500,000	$15,000	28,485,000
Insurance Gross Premiums Tax	29,200,000		29,200,000		29,200,000
Personal Income Tax		44,000,000	44,000,000	13,000,000	31,000,000
Retail Sales and Use Taxes	150,500,000	21,250,000	171,750,000	8,750,000	163,000,000
Other Revenues					
County Board Charges		750,000	750,000		750,000
Oil and Mineral Royalties from State Lands	1,260,000		1,260,000		1,260,000
Pay Patients Board Charges		8,000,000	8,000,000	3,600,000	4,400,000
Department of Conservation Revenue		240,000	240,000	120,000	120,000
Totals, Accrued Revenues	$203,460,000	$90,279,000	$293,739,000	$25,485,000	$268,254,000
SPECIAL FUNDS					
Agriculture Fund		$250,000	$250,000	$10,000	$240,000
California Water Fund	$2,800,000	50,000	2,850,000	10,000	2,840,000
Employment Contingent Fund		3,000,000	3,000,000	1,250,000	1,750,000
Fair and Exposition Fund	120,000		120,000		120,000
Fish and Game Preservation Fund	115,000	10,000	125,000	5,000	120,000
Motor Vehicle Fund		200,000	200,000	16,000	184,000
Motor Vehicle Fuel Fund	96,000,000	650,000	96,650,000	45,000	96,605,000
Motor Vehicle License Fee Fund		180,000	180,000	14,000	166,000
Motor Vehicle Transportation Tax Fund	2,500,000	210,000	2,710,000	25,000	2,685,000
Transportation Rate Fund	810,000	50,000	860,000	10,000	850,000
Wildlife Restoration Fund	130,000		130,000		130,000
Total, Special Funds	$102,475,000	$4,600,000	$107,075,000	$1,385,000	$105,690,000

nance determined the net amounts shown in Table I to be property accruable for the fiscal year ending June 30, 1967. The amounts of $268,254,000 for the General Fund and $105,690,000 for special funds represent the understatement of assets which would have prevailed on that date had the old cash basis of accounting revenues been used.

Both the Insurance Tax and the Bank and Corporation Franchise Tax have been treated as though the corrective legislation suggested previously has been adopted, since these changes are necessary to properly implement revenue accrual. Only accounts receivable for the prior year have been accrued for the Personal Income Tax, since the current tax does not qualify under either the "earned" criteria (events giving rise to the creation of an obligation to the state have not occurred) or the "measurable" criteria (amounts cannot definitely be determined).

Additional Administrative Actions:

Prior to the application of revenue accrual at the end of the next fiscal year, it will be necessary to provide detailed instructions to all operating agencies of state government to insure proper application of these new accounting principles. Although the development of these detailed procedures is already underway, they are included here as a necessary part of the accrual plan. They will include revision of the State Administrative Manual and pertinent Management Memos to provide the following information:

1. All criteria to be applied in accruing revenue will be described.
2. New general ledger accounts, such as Allowance for Uncollectible Receivables and Reserve for Liquidity, will be established and explained.
3. Journal entries to record revenue accruals, uncollectibles, collections, write-offs and similar transactions will be prescribed.
4. Methods to be used in estimating accruals (where pertinent) and allowance for uncollectibles will be provided.
5. Forms for year-end accrual reports to the State Controller will be developed, listing estimated accruals of the prior year, actual experience for that year, and estimated accruals for the year being closed. Reconciliation of the variation between the prior year's estimated and actual accruals will be included. Reports will contain a certification signed by the director of the department, and copies shall be furnished to the Department of Finance for budgetary purposes.
6. The Accounting Systems staff of the Department of General Services will supervise and assist all departments requiring revenue accrual reports in programming methods and procedures and in testing their effectiveness at the end of an appropriate accounting period prior to June 30, 1967.

A significant trial of procedure 6 has already been accomplished on the Board of Equalization computer equipment. Testing against the June 30, 1965, closing, it was possible to handle the complex accounting of sales tax earned in the prior quarter and have 98.5 percent of the

$270 million determined and cash identified to the State Controller within the 10-day period ending August 5th. All delinquent accounts and uncollectibles could be programmed by August 12th for 100 percent accuracy, in time to report to the Controller when he closes the state's books on August 15th.

Extension of the Present Accrual of Expenditures:

The consultants to the Department of Finance called attention to the fact that the state is not at present accruing its bond interest payable, even though valid continuing appropriations exist to permit such encumbrance. It has, therefore, been necessary to increase expenditure obligations as of June 30, 1967, by $20,877,482 to properly reflect these liabilities. Accrual of such other contingent liabilities as vacation earned and the next year's accrued compensation benefits were not considered as properly accruable to the ending year, since no valid appropriation exists at that time and the Legislature customarily meets these obligations with appropriations in subsequent years.

Limited vs. Full Accrual of Revenues:

Although the Department of Finance's consultants who established the criteria for proper accrual of state revenue did not propose any limited approach in their preliminary report of January 16, 1966, the Director of Finance did originally propose a budgetary policy for consideration by the Legislature which would limit the use of these funds for cash management purposes. In their final report, the consultants recognized this limitation as a "conservative budget policy" suggesting a "high degree of fiscal conservatism."

After the Governor proposed his accrual plan to the Legislature, the Senate leadership indicated that they felt this cash management limitation would be unnecessary, since the small additional cost of General Fund borrowing would be more than compensated for by the stimulation of our state economy that would result from leaving $140 million in the pockets of the people of this state rather than collect this amount in taxes before it was needed.

Since this cash management limitation was proposed as budget policy, and is properly a function of the Legislature to review, the Governor has, therefore, agreed with the Senate proposal that the cash reserve not be used, and that the full amount of accrued revenue be properly used to meet the state's expenses for this next year.

EFFECT UPON GENERAL FUND SURPLUS:

Since it would be inappropriate to implement the change to revenue accrual without legislative approval in the 1966 session, it appears appropriate to make this changeover at the end of the 1966–67 fiscal year. At that time, a surplus adjustment would be made to reflect this implementation for that year and would provide the base for full accrual of revenues and expenditures in the ensuing fiscal periods.

This surplus adjustment for the General Fund would recognize the true assets of the state available for expenditure, and would thereby increase surplus available for appropriation by $247 million as shown in the tabulation below:

GENERAL FUND SURPLUS

June 30, 1967

Ending surplus (Cash basis)		—$242,016,852
Accrued revenues	$268,254,000	
Less: Bond interest payable	—20,877,482	247,376,518
Ending surplus (Accrual basis)		$5,359,666

Application of this principle of revenue accrual will, therefore, meet the entire revenue gap required to finance the 1966–67 Budget as submitted to the Legislature and leave a modest surplus of $5 million.

ADVANTAGES AND DISADVANTAGES OF REVENUE ACCRUAL:

Advantages of this accounting change are both immediate and long-range. Obviously, at the time of conversion, the previously unreported resources of the state are made available to meet expenditure requirements. But several other inherent advantages will result from this accounting change as follows:

1. The state's books are not consistent now. They can only be made consistent by accruing revenue in the same way we accrue expenditures.
2. It is good business practice. Only in this way can we relate our income earned to the related expenses of the period.
3. At present, the true assets of the state are not disclosed. The principle of full disclosure demands proper accrual.
4. When assets are hidden, surplus is artificially reduced, thereby requiring more taxes than are necessary.
5. It is sound tax policy to not raise taxes until the state really needs the money.
6. Hopefully, it will emphasize to budget policymakers the desirability for shortening the gap between the time revenue is earned and the time it is collected.

Some disadvantages must also be recognized to the adoption of revenue accrual. They are:

1. This procedure will only provide additional surplus for one year. It does not produce a continuing source of revenue in future years, and does not, therefore, lessen the existing revenue gap in 1967–68.
2. It will require heavier than customary cash borrowing from internal sources by the General Fund than would be necessary if additional taxes had been levied to meet the $242 million revenue gap. This increased cost of borrowing would have to be weighed against the advantage to the taxpayer of keeping this money in his own pockets longer. (For example, if the $242 million revenue gap had been met by increased personal income taxes, the borrowing cost of $2.2 million could have been avoided, but at a premature cost to the taxpayer of almost one-quarter billion dollars.)

CONCLUSION:

There appears to be little reason to defer any longer the accounting reforms contained in this proposal to accrue the state's revenues to bring them into conformity with present expenditure accruals. The monetary advantages are obvious. The less tangible, but perhaps more important policy advantages are best expressed by the consulting experts in their final report to the Department of Finance:

> "We believe that the best interests of the state will be served by the adoption of a modern accounting system which provides for recognition of revenues when earned as well as recognition of expenditures when goods and services are received. The complete disclosure of the state's resources as well as its obligations should make a significant contribution to those who must rely upon the state's financial statements to guide them in enacting legislation, in establishing policy and in executing such policy."[3]

[3] Consultant's report to the Director of Finance, February 3, 1966.

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CALIFORNIA LEGISLATURE

THIRTEENTH REPORT SUPPLEMENT OF THE SENATE FACTFINDING SUBCOMMITTEE ON UN-AMERICAN ACTIVITIES

1966

MEMBERS OF THE SUBCOMMITTEE

SENATOR HUGH M. BURNS, *Chairman*

SENATOR AARON W. QUICK
SENATOR JOHN F. McCARTHY
SENATOR STEPHEN P. TEALE
SENATOR RICHARD J. DOLWIG

R. E. COMBS, *Counsel*

Published by the

SENATE
OF THE STATE OF CALIFORNIA

LIEUTENANT GOVERNOR GLENN M. ANDERSON
President of the Senate

HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary

FOREWORD

No inference of subversive affiliation or activity should be made solely because the name of a person, organization, or publication, is mentioned in this report.

Previous reports are now out of print, but may be found in the reference rooms of public libraries in California.

LETTER OF TRANSMITTAL

SENATE CHAMBER, STATE CAPITOL
SACRAMENTO, MAY 6, 1966

HONORABLE GLENN M. ANDERSON
PRESIDENT OF THE SENATE, AND
GENTLEMEN OF THE SENATE
Senate Chamber, Sacramento, California

MR. PRESIDENT AND GENTLEMEN OF THE SENATE: Pursuant to Senate Rules Resolution No. 1, adopted July 11, 1963, under authority of Paragraph 12.5 (13) of the Standing Rules of the Senate, the Senate Factfinding Subcommittee on Un-American Activities of the General Research Committee was created and the following Members of the Senate were appointed to said subcommittee by the Senate Committee on Rules: Senators Hugh M. Burns, Chairman, Richard J. Dolwig, John F. McCarthy, Aaron W. Quick and Stephen P. Teale.

The committee herewith submits a report of its investigation and findings.

Respectfully submitted,

HUGH M. BURNS, *Chairman*
JOHN F. MCCARTHY
RICHARD J. DOLWIG
AARON W. QUICK
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PREFACE

The criticisms of the Subcommittee's 1965 report by the President of the University of California has warranted the issuance of this supplement. In it we will respond to the major criticisms and will include an account of the major developments at Berkeley since the publication of our report in the summer of 1965.

At the outset, note should be made of the fact that neither the Legislature nor its committees are required to obtain evidence sufficient to establish facts to a moral certainty and beyond all reasonable doubt. Legislative Committees are established for the purpose of keeping the Legislature informed, and they function as finders of fact and not as courts of law. They are not bound by the legal rules of evidence, and can impose penalties only for contempt.

It is, of course, a cherished part of our system of democratic government that others may differ from and disagree with the value of the facts set forth in such reports, or the inferences drawn therefrom. Our critics have a right to disagree with the determinations we reach and the evidence on which they are based. Indeed, one of the purposes of the Subcommittee is to protect and perpetuate this vital right of criticism as one of our fundamental freedoms.

Before turning to President Kerr's specific criticisms of our 1965 findings, it is essential to acquaint our readers with a brief summary of the developments and purposes of the International Communist movement.

It is not only the constitutional right of every citizen to express his views in political affairs, no matter how radical or contrary to the views of the majority, but indeed the only hope of progress in a democracy is to allow all opinions to be heard and argued so that the wisest solutions to our problems may be achieved. The amendment process provided in our Federal and State Constitutions puts no limit on the extent of change that may be so introduced into our form of government, provided the requisite number of the people's representatives (and, in the State the voters themselves) are convinced of the

desirability of the change. If collective public judgment produces a poor result, the people eventually recognize it and reverse their stand. The only potential threat inherent in this power of change is the possibility that the right of amendment itself could be abolished by creating a self-perpetuating dictatorship. It is inconceivable that the people would choose such a course, though not completely inconceivable that it might be foisted on them, as it has been on other nations, by a highly organized, determined, and skillful minority. No such result has been achieved in any country except through the medium of a violent disorder or the deception of a backward and uneducated population. So long as change is brought about by orderly discussion, persuasion, and voting without coercion, our way of government is safe. If we permit groups or individuals to promote violence and subversion, we are in danger. It is from this point of view that we examine the meaning of Communism.

None can doubt that the historic credo of Communism under Lenin was that violent revolution had to be fostered throughout the world. A few quotations from early Party congresses can easily establish this point:

"The aim of the Communist International is to organize armed struggle for the overthrow of the international bourgeoisie and the establishment of an International Soviet Republic . . ." (2nd Cong., 1920.)

"The Fourth World Congress reminds the proletariats of all countries that the proletarian revolution can never be completely victorious within one country, but that it must win the victory internationally, as the world revolution." (4th Cong., Dec. 1922—Lenin's last Congress.)

"The conquest of power by the proletariat does not mean peacefully capturing the ready-made bourgeois state machinery by means of a parliamentary majority . . . The violence of the bourgeoisie can be suppressed only by the stern violence of the proletariat." [1]

This avowed purpose of violent international revolution did not deter the Communist Party of the U.S.A. from becoming a section of the Communist International, even though it meant subscribing to the 21 conditions for admission prescribed at the 2nd Congress in 1920:

"1. All publications of every party must be controlled by the Comintern through its central committee . . ." (a

[1] *Program of Communist International,* 1936.

committee dominated and controlled by the Russians and from authority situated in Moscow.)

* * *

"3. Each member party must maintain a secret, underground organization in addition to that portion of the organization which normally conducts public and semi-public activities.

"4. Each member party must strive to disorganize and weaken the armed forces of the country in which it exists"—(except, of course, in the Communist countries, where such activity, being counter-revolutionary, is punished by death.)

* * *

"8. Each member party must assist in revolutionary activities in the colonies of the country in which it exists.

"9. Each member party must establish reliable members to work within the structure of the trade union movement in order that non-Communist labor leaders may be replaced with party members.

* * *

"12. Each member party must submit to iron discipline and be bound by the absolute power of the central committee.

* * *

"14. Each member party must support all of the Soviet Republics of the U. S. S. R.

* * *

"16. The decisions of each member party may at any time be overruled by the executive committee of the Comintern."

In the light of this history, it is not surprising that the Communist Party of the U. S. A. was determined by the courts to be an agent of a foreign government and a threat to the welfare of this county. It may be well at this point to clear up a widespread misunderstanding that arose at the time of the Supreme Court decision in the Albertson case last November and that has been loudly propagated by the known Communists. Despite the brazen claim of Communist leader Gus Hall that the decision was "a vindication of the Communist party" and that Communists would now be able to make "a direct appeal to youth",[2] the Court actually held that

[2] *New York Times,* November 16, 1965.

Communists are a "group inherently suspect of criminal activities." For this reason, the government may not compel them to register, since "response to any of the form's questions in context might involve (them) in the admission of a crucial element of a crime," and the Constitution—the same Constitution that Communists wish to destroy—prohibits compelling a person to acknowledge participation in a crime.

The open acknowledgment of Communist aims began to give way to covert methods when the 5th Congress, in July 1924, approved a new "United Front" theory: join forces with liberal non-Communist organizations and use them for Communist purposes. Undercover activities became the key. "Link up the Communist parties of the west with the trade unions." Conduct "painstaking day to day work in a revolutionary manner among the masses, and especially in the trade unions, in the factories, among the unemployed, among agricultural laborers." (5th Congress, Comintern.)

These instructions did not refer to honest efforts at logical persuasion, as Lenin made clear in his book, *Left Wing Communism.* The CPUSA amplified his mandate in its own pamphlets, instructing members "to practice trickery, to employ cunning, and to resort to illegal methods." And despite the fact that many gullible liberals believed that certain Soviet pronouncements spelled the end of the Communist Party's commitment to deception and violence, all Communist Party official literature bears out that no Leninist edict has ever been repealed.

President Kerr charges that our 1965 Report "attempts to relate somehow to the current scene events which happened decades ago or thousands of miles away," apparently not recognizing that the revolutionary incitements to disorder today are related to a continuing activity. It is no longer as meaningful as it once was to call this kind of activity Communist, since the CPUSA discontinued issuing membership cards some eighteen years ago and devoted its efforts to more opportunistic activities. Now the veteran Communists enter into "united fronts" with any group having a grievance, and seek to aggravate the issue into open hostility and to keep it from being peacefully resolved. The organizational names have changed and multiplied—W. E. B. DuBois Clubs, Campus Progressive Labor, SLATE, and

the many others we have mentioned—and there are internal disputes about tactics; but the amoral view that no measure is wrong if it advances the world or any part of it toward Communism persists throughout.

Despite ideological differences between Peking and Moscow Communists; despite the wavering of the Castro Communists between the two; despite the 1956 revolts in the Balkans, there has never been the slightest disagreement among Communists concerning their main goal: world domination. Their only disagreement concerns the most expeditious means through which that goal may be attained.

There is no single name universally accepted as descriptive of the broad coalition of these organizations committed to the overthrow of our form of government. To call them Communist is technically inaccurate yet fairly close to what their avowed purposes, and especially their methods, warrant. Again we must remind the reader that our concern is not with whatever economic, political or social changes are advocated, nor whether proposed changes may be good or bad. The one issue that is critical is whether the change is sought within the framework of constitutional democracy. If it is, then even the effort to abolish that very constitutional democracy is legal. Since, however, those proposing a change of that kind recognize that they could never persuade the necessary majority of the voters, their efforts are devoted to sowing discord and generating class antagonisms that they hope will lead to revolutionary violence. It has been in the midst of such violence that well-organized political cliques have come to power in other nations, and it is probably the hope of these revolutionary groups to climb into the driver's seat under similar circumstances here.

As some small indication that this is not our invention but rather the serious purpose of leaders in these movements, we cite a few of their recent public statements. Here is a quote from Jerry Rubin, non-student leader of the Vietnam Day Committee at Berkeley, as published in the campus newspaper:

"In judging what activities to undertake, the VDC should use as one major criterion whether or not the activity will increase the number of people who are opposed to the structure and value system of American

society. . .'' [3] And one of his colleagues, Dennis Mosgofian, in coaching VDC house-to-house canvassers on the Lower Student Union Plaza on February 9, 1966, to prepare them for a campaign against the United States' Vietnam policy, urged them to make use of racial hostility. He acted out an illustrative interview with a supposed Negro householder in which he alleged racial segregation within integrated school classrooms in the Bay Area and discriminatory treatment in military service, in order ''to find something that interests him.'' About Negroes who are in military service, he said to the ''householder'', ''You know what kind of treatment they'll get when they get back.'' He suggested this type of introductory discussion as a means of ''making contact with these people—not just for today or for a year but for the long run.'' It was evident that the supposed concern over our national policy with respect to Vietnam was only a cover for other interests.

At a 7-hour conference on civil disobedience on the Berkeley campus, held in Room 2000, Life Sciences Building, on Thursday, November 4, 1965, one of the featured speakers, Bayard Rustin, responded to a question from the floor. The questioner cited Lenin in defense of the VDC's disruptive tactics, which Rustin had criticized. Rustin replied: ''That's not what Lenin said. He didn't advocate going around robbing banks just to be robbing banks. Lenin said, 'Don't rob a bank unless you need the money.' '' This sally drew a roar of approving laughter. Lest the point be missed, Rustin clarified it: ''No great revolutionary ever made of strategic questions a moral issue. The greatest—Lenin—advocated adopting whatever tactic would bring about the ultimate end.'' [4]

It may seem surprising to some that these three examples relate in greater or less degree to the VDC; but it must be realized that the great multiplicity of organizational names is only a matter of convenience and that they all act in concert toward similar ends. The same individuals appear as leaders in the revolutionary groups, whatever the name. It is not coincidence that the VDC took up the cudgels for a leader of the Progressive Labor Party 3,000 miles away, in a matter not involving Viet-

[3] *Daily Californian,* November 17, 1965, p. 7.
[4] *Daily Californian,* November 5, 1965, p. 16.

nam. In a circular distributed inside Wheeler Hall on January 5, 1966, the VDC declared:

"Bill Epton, a revolutionary Communist and a leader of the Progressive Labor Party, was convicted . . . of 'conspiring to riot' and 'criminal anarchy' in the New York State Supreme Court (for inciting violence in Harlem) . . . The Harlem Rebellion . . . was the result of high rents, police brutality, crowded housing, unemployment and countless other indignities. The black people . . . throughout the United States have been subjected to these conditions for many years. . ." Then, without adducing a single fact as to the Epton case: "Thus, the facts clearly indicate that Epton was framed. At this moment Jerry Rubin, Barbara Gullahorn, Steve Weisman (sic), and Larry Loughlin, leaders of the VDC, are in jail . . . for attempting to discuss the war in Vietnam with General Maxwell Taylor. It is not coincidental that Bill Epton was convicted at the same time that radical opposition to the war in Vietnam has expanded . . . We of the Berkeley Vietnam Day Committee demand the charges against Bill Epton be dropped and the conviction be immediately reversed. . ."

The characteristic lumping together of domestic racial problems, foreign policy, "police brutality", unemployment, and the rest, with no facts and certainly no attempts at solution of any problems, is the hallmark of the type of revolutionary agitation that has long troubled this committee. Whether Communist Party membership is openly acknowledged, as was belatedly the case with Bettina Aptheker, or support of similar objectives is merely evident in the behavior, speech, and writings of some individuals, we should take note of patterns of action that favor Communist goals and threaten to create violent disorder as a means of opposing "the structure and value system of American society."

The Kerr Analysis

In his Analysis and in statements to the press, President Kerr has demanded that Chairman Burns and the subcommittee waive legal immunity. The Academic Senates at the various campuses of the University have also been solicited to adopt resolutions demanding that we

"voluntarily remove the Thirteenth Report from the protection of Legislative immunity . . ."

We wish to make it clear that this immunity, being specifically conferred by statute, is not subject to waiver. (Opinion No. 1091, Legislative Counsel, Sacramento, to Senator Burns, October 16, 1965.)

We turn now to closer examination of those particulars which President Kerr has criticized in our Thirteenth Report, using as our source his press release of October 5, 1965, entitled "Analysis of the Thirteenth Report . . ." This release was also delivered to the members of the Board of Regents with a cover letter dated October 2, alleging inaccuracies and distortions of the facts in the Report and describing his press release as "an objective, factual analysis of the Report."

The preface and first two sections of the Analysis deal in generalities which must be discussed as such. President Kerr, in his preface, implies that criticism of his administration of the University's affairs is the result of this subcommittee's failure to understand and accept two somewhat contradictory University policies—"against the employment of Communists and . . . in favor of the open forum." As President Kerr noted in his remarks to the Regents at a closed session at Santa Cruz on April 17, 1964 (quoting from the summary minutes):[5]

". . . one of the problems facing the University in the application of the rule against the employment of Communists is that, except for a few people who are publicly visible, there are no longer members of the Communist Party . . . Consequently, it is impossible to identify a person as a member and it is difficult to point to a person who follows the Communist line which advocates the overthrow of the government. Further, it was the President's impression that far left activities are increasing and moving in the direction of violence, and that, as the Chinese movement becomes more dominant, there will be more and more tendency toward violence."

These assessments we believe to be correct. As head of the University, President Kerr had and has a duty to forestall this "tendency toward violence" and the infiltration of those Communists who do not choose to make themselves "publicly visible". The method, we believe, should not be by destroying the "open forum" but by

[5] Minutes of Regents.

keeping it honestly open. To allow acknowledged Communists to explain Communism and meet the challenge of informed opponents in the presence of the same audience has a reasonable claim to be called a "search for truth, through open discussion," even though a key participant is committed to no moral restraints. On the other hand, to allow Communists and the unidentifiable proponents of similar views almost uninterrupted use of those University facilities that reach the largest student audiences, not for analytical examination of the principles and practices of Communism but for insulting attacks on our government and all its highest officials, for incitement to criminal defiance of our laws, and appeals for hatred among those of different skin color or economic status—these are not evidences of the maintenance of an open forum but rather of its abuse. All these and more have occurred on the Berkeley campus repeatedly; our files and the Thirteenth Report are filled with records of such events. "Employment of Communists" is not to be regarded as a technicality easily avoided because "there are no longer members of the Communist Party." A nonstudent who is allowed to "teach" repeatedly over the public address system in front of Sproul Hall should be subjected to as critical an examination in this respect as a person who is allowed to teach because of his employment on the faculty. The former may well have classes ten times as large and meet them more frequently.

President Kerr's critique makes a special point of an allegation in our 1965 report to the effect that he declared Governor Brown had "double-crossed" him in calling on law-enforcement officers to clear Sproul Hall of students on December 2 and 3, 1964.

Since President Kerr placed emphasis on this point, we shall respond to his charge of error, and then proceed with more important matters.

On page 2 of his Analysis, Kerr said: "Among the inaccuracies in the report is one I should particularly like to correct. The suggestion that Governor Brown at any time went back on any agreement he had with me is completely false. He never did. I have never thought so and I have never said so."

In addition to the two faculty members who heard President Kerr's remark, as our report stated, others have made affidavits to the same effect. One of the mem-

bers of the University's Board of Regents, Mrs. Randolph A. Hearst, has stated that she was present and also heard the remark, and that Dr. Kerr repeated it thereafter on several occasions. Mrs. Hearst is, of course, less subject to reprisal than faculty members, and hence less reluctant to have her name included in this supplement.

Security

President Kerr discusses, on page 2 and 3 of his critique, his belief that this subcommittee's plan, established in 1952, to exchange information with the colleges of the State has been unsuccessful. Insofar as his participation is concerned, first as Chancellor of the Berkeley campus and later as President of the University, he is probably correct. No exchange can be effective if one of the two parties declines to act. Here is part of the statement (quoted in full in the 1965 Report, page 45) which Chancellor Kerr made on October 3, 1952, regarding his newly designated role as liaison between this committee and the Berkeley campus administration; it appears on page 1 of the *Daily Californian* of that date:

> ". . . the committee has not communicated with me nor have I been in communication with the committee. Moreover, I have no plan for communicating with the committee. Should problems ever arise, from relations with the committee, I shall consult with faculty and student leaders on this campus."

This hostile attitude contrasts markedly with the acknowledgements of helpful relations expressed by other college and university heads, some of which are quoted on page 144 of the Thirteenth Report.

President Kerr not only did not seek such help but actually took steps that tended to prevent its being given. Beyond the failure to make use of the opportunities to obtain information through liaison with the committee, he made it appear that such liaison was unnecessary by stating to a group of Regents and the chairman and counsel of this commitee, on January 17, 1963, that he was obtaining such information through an arrangement with the FBI. A careful check with FBI officials indicates that no request for such liaison was ever received

by that agency from President Kerr or his staff and that no such channel of regular communication was ever established. At the same January 17th meeting, he stated that he was not using the statewide security officer full time on security matters because the alleged arrangement with the FBI made it unnecessary.

Kerr Analysis, Section II

Section II contains comment on "three general points". Our discussion of these comments follows them in sequence.

President Kerr discounts the role of Communist elements in the "organization and direction of the student disturbances at Berkeley", citing the comments of observers on the "lack of consistent (political) ideology" as proof. He notes also that "only a few items in the literature of the student groups . . . featured the traditional 'class struggle' concept."

The heterogeneous ideologies of the mass of followers in a "united front" movement is, of course, the expected situation. The FSM originally included even the Young Republicans, though their chairman soon published a statement disclaiming any further association with the movement. The FSM continued to hold many others who had no sympathy with Communism but did not recognize the use made of this organizational platform to develop conditions that would favor Communist goals. The pyramid of leadership of the FSM ascended through a large group variously called Executive Committee or Executive Council to a Steering Committee of nine members, including Bettina Aptheker, Mario Savio, Jack Weinberg, Arthur Goldberg, Stephan Weissman, and others who shared closely similar political views. The close resemblance of these views to those of the Communist ideology is not surprising since Miss Aptheker, whom J. Edgar Hoover termed "a close advisor of Mario Savio (FBI Appropriation, 1966—Testimony before Subcommittee on Appropriations, March 4, 1965), the FSM's leader, was at that time a well-indoctrinated Party member, as she admitted more than a year later. The position of power held by the Steering Committee was not apparent to most of those who supported the rebellion because the illusion of democracy was carefully preserved. Only months later

did Weinberg, a member of that committee, state: "Last semester the FSM was not democratic—the constituency was not integrated into the structure. . . . A coalition of political groups was formed to fight for their rights [but] . . . normal students were not in on the policy-making of the movement."[6] And the policy they advocated was that of complete seizure of power by the left wing of students and faculty.

Miss Aptheker followed Weinberg's remarks with some of her own to emphasize this policy of seizure of power by the student rebels. Throughout the rebellion, no compromise had been acceptable to the Steering Committee, and President Kerr's "negotiation" with them had, in each instance, resulted in his unconditional surrender. Encouraged by this record of easy successes, Miss Aptheker declared: "We want to be able to bargain collectively with the Regents and say, 'Baby, you give in or we strike.' "[7]

The acknowledgment of "only a few items" of Communist-line literature is a weak broom with which to sweep this issue under the rug. Among these "few items" was a pamphlet by a noted Trotskyist Communist writer, Hal Draper, who is employed in the University library and who, whether or not a formal member of the Steering Committee, was highly influential in its councils. *The Mind of Clark Kerr* was his insulting attack on Kerr and a political diatribe against our form of society. But more important than the "few items of literature" were the frequent references in speeches to the "class struggle" idea. The theme that the Regents are "big business", that students are being "exploited" by these capitalists, and that "students and workers" must unite to fight them recurred incessantly. The attempt to persuade the Teamsters Union to support the student strike of December 3, 1964, failed; but the advocates of a student-worker alliance against the Regents continued to preach that, "when we deal with these . . . Regents . . . we are dealing not with mere businessmen but with Business."[8] Even now this theme is heard. When the labor union formed by some Teaching Assistants obtained permission to use

[6] *Daily Californian*, April 29, 1965.
[7] *Daily Californian*, April 29, 1965.
[8] Garson—"The Regents", reprinted on p. 219 of Draper, *Berkeley: The New Student Revolt.*

Sproul Hall steps on November 11, 1965, for a rally in support of the agricultural strikes in the San Joaquin Valley, Ann Draper couched her appeal to the students in these terms: "The Regents are your enemies, just as they are ours." Then, after reciting the business connections of certain Regents: "These Regents are the enemies of labor just as they are your enemies. That is why you must help us in our fight."

Regarding the University administration's position on Communism, President Kerr repeats the formal statement of the Regents' policy against employment of Communists as faculty members, which was cited in the 1965 Report, p. 138. He is apparently content, however, to rest on the most limited interpretation of the letter of the policy rather than to adhere to its spirit and obvious intent.

When this policy was adopted in 1940, Party membership was one unequivocal test that could be made in some cases. Even in that 1940 declaration, however, the broad intent was made clear by the final sentence quoted by President Kerr: "Tolerance must not mean indifference to practices which contradict the spirit and the purposes of the way of life to which the University of California as an instrument of democracy is committed." The 1949 expansion of this statement, as cited by Kerr, states that, "pursuant to this policy," no Party member shall be employed in any position by the University. The "policy" still expressed concern about "practices which contradict the spirit and the purposes of the way of life" in our democracy; rejecting Party members was simply one small step in protecting against such practices. The intent is made still clearer by the Academic Senate resolution of 1950 which Kerr quotes and which was concurred in by the Regents: "No person whose commitments or obligations to any organization, Communist or other, prejudice impartial scholarship and the free pursuit of truth will be employed by the University." The resolution then pinpoints Party membership as one proof of such bias but not necessarily the only proof. It is Kerr's continued insistence on "proof of Communist membership", which he again demands in this section, that reduces to empty words the substance of the policy. That he must know this to be the conse-

quence of his narrow and rigid interpretation of the policy is made evident by his own words.

Under his Point 2, President Kerr again returns to the point made in his introduction that "no information received . . . from the Burns Committee has at any time resulted in any action by [any chancellor] . . . affecting any personnel under his jurisdiction." Clearly, if Kerr, as the Chancellor at Berkeley, where the chief problem has long centered, was unwilling even to establish communication with this Committee, it was unlikely that any action on his part would result. In fact, the liaison plan was primarily intended to place in the hands of the University administration whatever information was available on a prospective employee, so that the appropriate administrative officer could more effectively examine his qualifications. The Committee never sought or desired to go beyond that; and it would certainly not undertake to act as an investigative and prosecuting agency to secure the dismissal of a University employee. Care in selecting employees, faculty or other, is far more effective in safeguarding the Univeristy from subversive influences than trying to convict an established employee in the face of the many barriers imposed not only by law and custom but more particularly by those whose generous instincts respond too readily to the false cry of "witch-hunting". It is a truism that not everyone is allowed to teach our young people; credential systems are only a part of the defense we have set up. Just as an unkempt and dirty applicant would be rejected by any school, college or university administrator, so also a proper concern for the applicant's demonstrated attitude toward morality and toward the democratic way of life should enter into the administrator's decision, and he should welcome the fullest information bearing on these traits. As Chancellor and President, Clark Kerr has avoided consideration of such information.

A very significant sidelight on this issue comes from the minutes of the Regents Committee on Educational Policy when they met in a "Regents Only Session" on September 24, 1964. This was the meeting at which the Academic Senate Resolution of 1950, quoted by Kerr, was considered as a possible basis for revision of the Regents' policy statement on employment of Communists. The minutes state in part:

"The members . . . concluded that the first sentence thereof [the one quoted on page 23] represents an appropriate policy and might be incorporated in a restatement of The Regents' policy. It was noted that this statement excludes both Communist Party members *and other persons with Communistic ideologies* . . . [our italics]. The President advised that he will present a recommendation on the proposed policy restatement at a subsequent meeting."

We note not only that the President's repetitious call for "proof of Communist membership" is at variance with the Regents' recognition of the broader problem (and with his own) but also that, some 17 "subsequent meeting[s]" later, he has not proposed a policy restatement as promised.

President Kerr quotes from a letter that he wrote to Senator Burns in 1962 "in response to allegations that the Burns Committee had information regarding the possible Communist Party affiliation of University employees." If such allegations were made, they did not come from this Committee; the Communist Party had gone underground and proof of Party membership would have been, as President Kerr noted, practically impossible to obtain. Senator Burns and the Committee counsel did meet with President Kerr and certain Regents on January 17, 1963, to discuss the problem of Communist infiltration, as mentioned previously in this supplement, so that it is less than accurate for him to state: "I received no information in reply to this letter."

His challenge to the Committee still rests on his misconception of its role. Confusing the requirements for judgment in the hiring of teachers with those for conviction in a criminal trial, he returns to his insistence on "substantiated evidence" that would result in conviction under "the American system of justice." Courts have indeed recognized the right of school administrators to refuse employment to persons who hide behind the Fifth Amendment, although this issue cannot be used against anyone in a criminal prosecution; but President Kerr has declined to accept the documentation offered by a committee of Congress as sufficiently "substantiated evidence" to weigh when considering whether to engage the services of a faculty member. (See the cases of Eli Katz and Leon Wofsy discussed herein.) The relative harm to

society from not accepting, and to the individual from accepting, such evidence when considering a faculty appointment is quite different from the relative effects when criminal conviction is involved. Society and its laws may well lean backward to protect an individual from erroneous conviction of crime; but it may equally well lean in the direction of protecting youth from subversion in the classroom and on the campus at the cost of not hiring a particular individual when the evidence is as good as that cited in the cases discussed herein.

3. This point nominally deals with the role of the University security officer, Mr. William Wadman. In fact, it seems intended as a rebuttal of the thesis of that section of the Report entitled "Security" (pp. 143–146), which states: "The Berkeley campus in recent years has been opposed to security measures . . . concerning problems of subversive infiltration." We should have made the statement more precise than we did, and stated that the Berkeley campus under the chancellorship of Clark Kerr and the statewide University under his presidency have been opposed to such measures.

During President Sproul's administration, the Security Officer continued, even after July 1954, to utilize his other sources of information for the protection of the University against subversion, making his services available also to chancellors on request. During President Kerr's administration, these activities were halted. As President Kerr states: "It was not until two years after I became President that Mr. Wadman was assigned to work on insurance matters. He stated that he was not fully occupied by his defense contract duties. . . ." In this respect, his comment is correct. Our contention is that if the security services formerly rendered by Mr. Wadman had been continued, instead of being restricted to defense contract work later supplemented by insurance matters, it would have helped the administration to recognize the assault being developed against it by subversive elements.

Kerr Analysis, Section III

Section III of the Analysis begins with criticism that "the Committee[9] has held no public hearings." As indi-

[9] The Committee became a Subcommittee of the Senate Committee on General Research, hence the terms are used interchangeably.

cated in the introductory paragraphs of this Supplement, this Committee assembles information much as a responsible journalist might, conducting as careful an investigation as is possible with the means available, with the objective of developing a coherent, factual account of those events that seem pertinent to the subject. Public hearings occasionally play a part in this process, but more important than the means by which the reports are developed is the quality of their substance.

Martin Kamen

This concerns the case of Dr. Martin Kamen, and before dealing in detail with the full aspects of the case, it seems worth noting the techniques employed in the Analysis in its criticism of the Report's supposed inaccuracy, since these techniques give some measure of the objectivity of Dr. Kerr. The statements he challenged here are that Kamen "was an assistant to Dr. J. Robert Oppenheimer" during the atomic bomb research, and that he was observed passing classified information to a Soviet agent. Of this latter point, Kerr erroneously states that it involved "a single luncheon", a point we shall discuss at length hereafter.

On page 60 of our Report, we referred to Dr. Kamen as a colleague of Leon Wofsy's at the time the latter applied for a position on the faculty at Berkeley. Kamen wrote a letter on January 30, 1964, addressed to Professor "S. S. Ellberg" (sic), stating that he had known Wofsy at the San Diego campus of the University, and endorsed his application for the position at Berkeley. Our reference to Kamen was as follows:

> "He was Martin Kamen, the man who was an assistant to Dr. J. Robert Oppenheimer at Berkeley during the research that led to the development of the atomic bomb, and who was followed by government agents and photographed passing classified information to a Soviet Vice-Consul in a San Francisco restaurant."

In criticizing our statement, Dr. Kerr made several errors. He said:

> "This sentence undoubtedly refers to a *single luncheon* (our italics) which occurred in 1944 and

which was also directly involved in libelous statements appearing in 1951 in the *Chicago Tribune* and the *Washington Times-Herald.* Dr. Kamen brought suit on these stories and, following a unanimous jury verdict in his favor in the *Herald* case, received substantial damages from the *Herald* and a settlement from the *Tribune.* His attorney in those cases, Alexander Boskoff, has written me a letter . . . in which he says about the sentence in the Report concerning Dr. Kamen:

"'I am pleased to inform you that the statement is absolutely false, and its publication in my opinion represents wanton disregard of the truth.'

"Incidentally", continued Dr. Kerr, "it is also untrue that Dr. Kamen served as an assistant to Dr. J. Robert Oppenheimer."

Dr. Kerr referred to a "single luncheon" where Kamen chatted with the Soviet Vice Consul. We know nothing about such an affair and doubt whether it ever occurred. If Kerr and Boskoff were discussing a luncheon meeting between Kamen and Soviet agents, it is news to us—and probably to Dr. Kamen. We were referring to a dinner meeting that was held at Bernstein's Fish Grotto on Powell Street in San Francisco on July 2, 1944, and which commenced at about 5:30 p.m., and ended approximately two and a half hours later. We doubt if there was ever a luncheon meeting such as Dr. Kerr described, because Kamen had been under close surveillance by government agents for some time and no mention of any "single luncheon" appeared in their reports. But government agents have stated that there was the dinner meeting we were referring to, and so did the very best witness we can think of—Dr. Kamen himself. He said so under oath on Tuesday, September 14, 1948, at 10:30 a.m. before the House Committee on Un-American Activities.[10]

Dr. Kerr also stated that Kamen never worked as an assistant under Dr. J. Robert Oppenheimer. Here, again, Dr. Kamen's testimony is helpful, as he stated that he was employed at the Berkeley Radiation Laboratory

[10] See: "Hearings Regarding Investigation of Communist Activities in Connection with the Atom Bomb", September 9, 14, and 16, 1948, p. 18.

doing atomic research for four years and that from 1941 onward he was employed at the Manhattan Project. He was, indeed, a group leader when the head of the atomic research program was directed by Oppenheimer. He was assisting in research involved in the production of an atomic weapon, and that effort was under the general direction of Oppenheimer.

Since President Kerr has opened up the matter of Kamen's participation in the meeting with Soviet agents Kheifits and Kasperov, it is pertinent to report that the former was well-known as an espionage expert. Born in Moscow in 1899, Gregori Markovich Kheifits had done similar work in Germany in 1934–38. He came to San Francisco in 1941 and returned to the Soviet Union on July 6, 1944. His secret and illegal radio messages had been monitored by the FBI since 1943, and it was known that he passed along his information through drops and contacts in Mexico City. Among his contacts were Kamen, Steve Nelson, and scientists employed at the Shell Development Company at Emeryville and at the Radiation Laboratory in Berkeley.

Dr. Kamen, a distinguished scientist, admitted the foolishness of making this contact with Soviet agents while employed on a highly secret project. He was never proved to have been connected with any spy ring, as certain newspapers asserted; but he *was* dismissed from the Manhattan Project as a security risk, and he *had* allowed himself to be maneuvered into an exceedingly embarrassing situation. Instead of consulting his own country's security experts when invited to the dinner, he presumed to handle these two crack espionage experts on his own. There was a security establishment functioning, but Dr. Kamen did not see fit to use it—even to his own advantage. It was another case of an amateur entering into a highly specialized field about which he knew nothing.

The facts remain that while Kamen was not found guilty of anything more than being a security risk, there is sworn testimony from him that he *did* attend the dinner; that he did so at the invitation of two Soviet agents; and that he *did* discuss certain aspects of the secret project on which he was then employed. The conversation was

monitored, and scientific evaluation disclosed that classified information *was* passed along to these two Russians.[11]

Chancellor Edward W. Strong

In introducing our account of the removal of Chancellor Strong, we briefly described some of the events surrounding the Regents' meeting of January 2, 1965. President Kerr seems to have misread that description. Noting that there were "maneuvers behind the scenes", the Report tells of a preliminary meeting of three Regents at the Hilton Inn, San Francisco Airport; Kerr replies that the meeting there on January 2 "was a full Board meeting". The Board meeting did indeed occur; that the preliminary meeting also did take place, however, is attested by the eyewitness account of Chancellor Strong, as submitted to the Forbes Committee of the Regents and "leaked" to the press in March, 1965. In that statement, Strong refers to the meeting at "the Hilton Inn where Don (McLaughlin) went into conference with Carter and the president (and probably other Regents)."[12]

The Analysis mistakenly reads the report's phrase, "the announcement on January 3" of Chancellor Strong's replacement by Martin Meyerson, and offers the correction that the date of the Regents' meeting was "January 2 (not 3)". The public announcement did first appear in the newspapers of January 3, as stated.

President Kerr's explanation of how Strong was replaced as Chancellor is given in his Analysis as follows:

"The Regents granted Chancellor Strong a leave of absence to recuperate from his recent illness, and appointed Dean Martin Meyerson Acting Chancellor. Chancellor Strong submitted his resignation to the Board more than two months later, at its meeting of March 13, 1965."

In contrast to this bland account of the apparently considerate action of the Regents and the simple resigna-

[11] See "Report on Soviet Espionage Activities in Connection with the Atom Bomb", September, 1948, pp. 181–182; "Excerpts from Hearings Regarding Investigation of Communist Activities in Connection with the Atom Bomb", September 16, 1948, p. 11 et seq.; U. S. Senate Judiciary Subcommittee on Immigration and Naturalization, September, 1949, pp. 801–823.

[12] *San Francisco Examiner,* March 13, 1965.

tion "submitted" by Strong, here is what Strong reported in a statement to Regent William E. Forbes, chairman of a special investigating committee:

> "Throughout the Fall semester, my staff and I tried to maintain a consistent and firm stand on enforcement. After struggling through a series of Presidential vacillations, interventions, reversals, and retreats, I refused finally to concur in the President's capitulation of December 7 [1964]. I recognized (and so stated to the President on December 5) that my stand against capitulation . . . could result in request for my resignation . . . On January 2, the Chairman of the Board of Regents told me that I could either resign, be dismissed, or accept an indefinite leave of absence . . ." [13]

The Filthy Speech Movement

In answer to the Report's criticism of Kerr for lack of vigorous leadership in responding to the "Filthy Speech Movement," the Analysis offers these defenses:

(a) It was "the Chancellor's responsibility."
(b) Referring the cases to faculty committees (the Report erred in calling them "committees of the Academic Senate") was "the pursuit of established procedures".
(c) "The committees are advisory . . . The Acting Chancellor . . . made the decision and assessed the penalties."

We consider these points in turn:

(a) It was indeed the Chancellor's responsibility to discipline students who so grossly violated not only campus rules and the direct orders of the Chancellor but also the standards of decent conduct of the general community. When the Chancellor failed to act, the matter came to the attention of the Regents. Their demand for appropriate administrative action was properly addressed to President Kerr. At that point, prompt and direct intervention would have been in order; yet the President, who had not hesitated to intervene and undercut the Chancellor's

[13] Letter, Chancellor E. W. Strong, February 9, 1965.

authority when Chancellor Strong was trying to enforce the existing rules, relied on the plea of "campus autonomy" when Chancellor Meyerson's failure to enforce rules was forcefully brought to his attention. Even then, when the Chancellor again declined to act and sought to transfer his responsibility to either of two unwilling faculty committees, President Kerr endorsed this weak stand by stating that "faculty committees should not seek to avoid their responsibility for assisting in discipline . . ." [14]

(b) Both the Faculty Committee on Student Conduct and the Study Committee on Campus Political Activity (the Robley Williams Committee) nevertheless declined to deal with the matter. Chancellor Meyerson thereupon set up an *ad hoc* committee under the chairmanship of Professor John R. Whinnery for the specific purpose of considering the "filthy speech" offenses. This juggling of the matter among existing committees that disclaimed jurisdiction and creation of one more unnecessary committee can scarcely be deemed "the pursuit of established procedures", as President Kerr calls it. A judicial off-campus view of this administratively muddled situation came from Municipal Judge F. F. Van Sicklen when he heard arguments on a writ of prohibition to prevent the Whinnery committee from considering the obscenity cases. According to the *Daily Californian,* he "questioned 'from a practical standpoint' how important it is to have the committee question the students at all. 'Why can't the chancellor act on it immediately?' he asked . . . 'The University must have the right to act speedily and have the ability to control the students,' the Judge said." [15]

(c) Although the committees are technically advisory and, as President Kerr states, "the administration thus does not 'escape' ultimate responsibility," this is true only in the legal sense. In the public relations sense with respect to the opinion of rebel students and faculty, which seems to have been the governing influence in this case as in many others, the administration keeps its hands clean by pointing to the faculty committee as having made the judgment. The administration made sure that its non-executive role would be generally recognized when

[14] *Daily Californian,* March 12, 1965.
[15] *Daily Californian,* April 1, 1965.

"an administration spokesman said the recommendations (of the Whinnery Committee) had been 'followed to the letter'."[16] So, a month and a half after these vulgar offenses that should have been stopped on the spot by an effective administrator, the administration could claim that it had kept hands off to the very end.

It is interesting that, here and elsewhere, the Analysis criticizes the Report for slight errors in committee nomenclature as, for instance, "faculty," (not Academic Senate) committees. President Kerr should be especially sensitive in this regard since the error he made, in concluding his negotiations with the rebels who seized the police car in October, proved so disastrous. The agreement he signed referred to the nonexistent "Student Conduct Committee of the Academic Senate"; the rebels refused to accept Kerr's assertion that he had meant the Faculty Committee on Student Conduct, and so the first of a long series of special committees was established to pacify the rebel group.

The Report made an obvious error on page 154 in referring to "the Forbes Committee, headed by attorney Jerome C. Byrne," and the Analysis correction is accepted. Mr. Byrne headed the *staff* created to assist the Forbes Committee in its study of the University's problems with rebellion.

Clara Ontell

The Report stated the security clearance of Miss Clara Ontell "was refused." The Analysis declares this to be incorrect, since her clearance was still "in process" when Miss Ontell resigned for personal reasons. Dr. Kerr pointed out that she had come to his office from President Sproul's office in July, 1952. According to rules, her Personnel Security Questionnaire had to be filed by April 1, 1953. It was duly executed and directed to the Inspector of Naval Materiel, Post Office Box 3364, San Francisco, where it was shown to be "in preparation" or "clearance pending." For some reason, it remained in that category for four years. It is not customary to hold up PSQ's for that long, and Miss Ontell—whatever her personal reasons—put an end to the matter by submitting her resignation, which took effect September 19, 1957.

[16] *Daily Californian,* April 22, 1965.

Virginia Taylor Norris

Our report stated that Virginia Taylor (now Virginia Norris) had attended the Communist school in San Francisco for two terms, and that in her Personnel Security Questionnaire this information had been added by a typewritten addendum. We also pointed out that she had been a delegate to a meeting of the International Student Service while she was a student at the University of Washington. This organization was a component part of the Communist-controlled American Youth Congress.

In a letter to Senator Burns dated June 18, 1965, Mrs. Norris admitted that she had attended this conference, but stated that Mrs. Eleanor Roosevelt and other non-Communist liberals were also present. This, in our view, would not be sufficient to purify the organization. Indeed, as we indicate elsewhere in this supplemental report, Mrs. Roosevelt frankly stated that she had tried working with American Communists and found it impossible.

The Communist character of the American Youth Congress is easily established through statements issued by the Communist press.[17] Its former National Secretary, Joseph P. Lash, has also stated that it was a Communist front.[18]

The Communist control of the International Student Service is also indicated by the fact that at one of the meetings of the American Youth Congress it was represented by Harper Poulson. He attended the Congress on November 7, 1949, and had become a member of the Communist Party four years previously. Mr. Poulson left the Communist movement in 1957 and has testified freely and fully concerning his experiences.[19] We believe this is a better test of a sincere break with Communism than an interview by a person with no security experience and the perfunctory execution of the State loyalty oath.

We assume that Miss Taylor had no knowledge of the sort of organization whose meeting she attended as a delegate. It was a front, and one of the prime purposes of a front is to conceal the Communist manipulation and domination from the non-Communist membership. The

[17] See: *Daily Worker*, January 5, 1935; July 4, 1935.
[18] HUAC, Appendix IX. p. 525.
[19] *Los Angeles Times*, October 23, 1959.

nature of the American Youth Congress was generally known, as we have explained.

When it became necessary for Miss Taylor to fill out her Personnel Security Questionnaire, she consulted with the University Security Officer at Berkeley. She asked him whether she should include her attendance at the Communist school in San Francisco and meetings of American Youth for Democracy (which was another name for the Young Communist League) in Seattle. He told her that her attendance at the school would probably be a matter of record, but that she would have to use her own judgment.

Miss Taylor omitted mention of having attended meetings of American Youth for Democracy, but, as we have said, added an explanation of her participation in classes at the Communist school. It appears from our interview with the Security Officer that she attended *meetings* of AYD, not just the single meeting she specified in her letter to Senator Burns.

If Mrs. Norris wishes to execute a sworn statement to the effect that she attended only one such meeting, and that she never affiliated with American Youth for Democracy, we will gladly receive the document, accord it the appropriate publicity in our 1967 report, and make it a part of the permanent record.

Campus Speakers

Here, as elsewhere, the claim that the Analysis is "objective" becomes suspect. The Report noted (page 141) "the new 'free speech' policy of President Kerr", one aspect of which was the admission of Communist lecturers in 1963. It pointed out that there was no requirement for balance or critical examination of an extremist view—merely acknowledgment "that a Chancellor '*may,* if he considers it appropriate,' require that the meeting be chaired by a faculty member with tenure, that questions from the audience be allowed, and that 'the speaker be appropriately balanced in debate with a person of contrary opinion.'" It then cited "an endless procession of [persons] . . . ranging from the extreme right to the extreme left, with heavy emphasis, in our view, on the left." Since the illustrative examples included Communist Albert J. Lima, first to be admitted

after the Communist speaker ban was lifted, Malcolm X, William Buckley, Jr., Mark Lane, and Dr. Fred Schwartz, President Kerr ties all of them to the cancellation of the Communist speaker ban with the following criticism:

"It should be pointed out that the persons listed above, except for Lima, are not identified Communist Party members (among them are prominent conservative figures who might wish, rather, to be identified as 'anti-Communist') . . ."

This is scarely a pertinent retort to our criticism of an educational system under which the slogan of "free speech" is used to grant extremists of both right and left virtually uncontrolled opportunity for false teaching. On the Berkeley campus, the safeguards that the Chancellor "may" exercise are never in fact exercised. Only if the group sponsoring the meeting chooses to allow questions or to present the opposite opinion is this check on deceptive propaganda ever available. The groups of the extreme left have made it their practice to avoid such opposition in the meetings they sponsor and to hamper the presentation of opposing views, by heckling and other obstructive tactics, in the relatively rare meetings of moderate or conservative groups. A description of one such incident, as reported by an eye-witness, may prove illuminating.

The occasion, on May 27, 1965, was an attempted serious study of the complex problems of U.S. engagement in Vietnam. The incipient Vietnam Day Committee group had held a number of one-sided meetings, resisting specific efforts of those who asked permission to present counter-arguments and affording no opportunity for questions from the audience. It had staged a so-called "teach-in" in April under such outrageously biased conditions that the two scheduled defenders of U.S. policy, Professors Robert Scalapino and Eugene Burdick of the Political Science Department, refused to participate. To restore the University's claim as an "open forum" for objective and scholarly analysis of controversial issues, a faculty group arranged for a fair and thorough debate, chaired by a faculty member, with one distinguished visitor and one faculty member on each side—Professor O. E. Clubb of Columbia University and Professor Franz Schurmann of Berkeley opposing U.S. policy, and As-

sistant Secretary of State William Bundy and Professor Robert Scalapino defending it.

Pickets bearing insulting signs directed at Professor Scalapino greeted the audience as they arrived and then marched into the crowded Wheeler Auditorium and attempted to seat themselves in the center aisles with signs held aloft. The chairman protested and finally allowed the pickets to hold their signs provided they stood or sat in the side aisles. When the chairman announced the rules of debate, including the request that no sounds of disapproval be made, only applause to indicate approval or silence to show disapproval, the rebel segment hooted in disdain. Of course, booing, hissing and catcalls interrupted the pro-U.S. speakers, while anti-U.S. speakers received courteous attention, even from those who opposed their views. The moderator may well have intended to be neutral, but under pressures from the anti-U.S. side, he was helpless. The Vietnam Day Committee handed out its circulars in the auditorium; Professor Schurmann ignored reminders and took more than one and one-half times the amount of time allotted him; the power for the flood-lights and movie cameras that filmed the first three speakers was disconnected when Dr. Bundy arose, and it was repeatedly disconnected throughout his talk. The question period was allowed to become a farce. Anti-U.S. questioners made long speeches. The crowning touch to the successful efforts of the anti-U.S. group was the announcement by the moderator that Professor Smale (of the VDC) had *demanded* five minutes and would be granted this "reasonable" request.

This is an example of the "open forum" and "free speech" policy as practiced on the Berkeley campus. It is by no means an isolated case; far more shocking behavior has occurred in many instances.

President Kerr takes issue with the statement in the Report (page 79) that he recognized, though very late, the impact of Castro Communism on the youth of America "when he declared these highly indoctrinated Castroites to be at the heart of the Berkeley Rebellion." In particular, he disclaims the words above that follow "declared" and offers some other remarks that he did make on this subject. The Report did not present those words as an exact quotation, but we believe we gave the sense of his statements as reported in a signed article on part 1 of the *San Francisco Examiner* of October 3,

1964. That article, under the by-line of Ben Williams, says:

"University of California president Clark Kerr yesterday declared flatly that a hard core of 'Castro-Mao Tse-Tung line' Communists were in the crowd of demonstrators . . . Kerr told an Examiner reporter that very few university students were actually involved in the hard core leadership. 'There is an extreme left wing element there,' he said. 'Forty-nine percent of the hard core group are followers of the Castro-Mao line.' "

We do not doubt that he also said, as he asserts in the Analysis, that "some elements active in the demonstrations have been impressed with the tactics of Fidel Castro and Mao Tse Tung." Nor do we doubt his quotation from a speech of Mario Savio's a few days later: "I must say both these gentlemen impress me . . ." Even as President Kerr and rebel leader Savio recognized the resemblance of the rebels' tactics to those of revolutionary guerillas, so also have we. The principal differences are that Savio and his followers practiced these tactics, Kerr condoned them by yielding to them, and we condemn them.

Margaret Gelders Frantz

On page 75 of our 1965 Report we stated that Mrs. Margaret Gelders Frantz, then employed by the Institute of Industrial Relations at Berkeley, had been identified as a member of the Communist Party by Ralph Long on November 30, 1954. (HUAC, Investigation of Communist Activities at the University of Florida, November 29 and 30, 1954, page 7365.)

In his critique Dr. Kerr stated that Mrs. Frantz had taken the loyalty oath and had been quoted in a San Francisco newspaper to the effect that she was no longer a Communist. Our reference to Mrs. Frantz was made in a section of our report devoted to the Institute of Industrial Relations, in which we said that a number of people connected with the Institute in one way or another had backgrounds of affiliation with some Communist-dominated organizations.

After Roger Heyns was selected as the new Berkeley Chancellor to replace Acting Chancellor Martin Meyerson, who in turn had replaced former Chancellor Strong, there were some announcements to the effect that new

personnel had been chosen for the Chancellor's office. Dr. Alex Sherriffs, who had been Vice-Chancellor since 1958, and Mrs. Kathlyn Malloy, who had served as administrative assistant to several Chancellors, were to be replaced. Earl F. Cheit was made Executive Vice-Chancellor, and came to that position from the Institute of Industrial Relations. He announced on August 19, 1965 that Mrs. Margaret Frantz would also be shifted from the Institute to work in the Chancellor's office as his secretary. This provoked considerable surprise in view of the fact that she had been mentioned in our 1965 Report. Cheit then shrugged aside the report as irresponsible, and said that in spite of the fact that Mrs. Frantz had been introduced as his secretary at a staff conference, this had been an irresponsible announcement, and the truth of the matter was that she had been brought in on a temporary basis to assist him in setting up some files. Mrs. Frantz then ended the controversy by announcing that she did not wish to become involved in the matter, and disassociated herself from the Chancellor's office.[20]

The *Examiner* article referred to above stated that since coming to Berkeley in 1951, Mrs. Frantz had been engaged in a number of "leftist and Communist causes," and that she had been "retained by Cheit without benefit of security clearance."

Mrs. Frantz was raised in a Communist family. Her father, the late Joseph Sidney Gelders, was well-known as an influential member of the Party. He was born in Birmingham, Alabama, in 1898, attended the University of Alabama from 1930 to 1935, and was employed there as an Assistant Professor of Physics. He resigned to devote time to other interests, among which was the establishment of the Communist-operated Southern Conference for Human Welfare, for which he acted as field representative in 1939. Paul Crouch, a Party functionary for many years, has stated that he knew Margaret Gelders as a member of the Young Communist League when he visited at the Gelders home in 1938, and that he knew her future husband, Laurent Frantz, as a member of the Party's District Buro at Birmingham.

[20] See: *San Francisco Examiner,* August 26, 1965.

Laurent Frantz is an attorney, and has served as a member of the executive board of the front known as the Emergency Civil Liberties Committee. He was also active in the Southern Conference for Human Welfare, as was Margaret Gelders as editor of its organ, *Southern Patriot.* She was followed in that position by Anne Braden, also a member of the Communist Party.

Margaret Frantz was selected to head the Independent Progressive Party in Alameda County in the 1950's. That movement was headed by Hugh Bryson of San Francisco, who was convicted and sentenced for falsely swearing that he was not a Communist. She also supported the Civil Rights Congress, listed as a Communist front by the Attorney General of the United States, and ordered to register as such by the Subversive Activities Control Board.[21] She also signed appeals for several other Communist front organizations.[22]

The Young People's Socialist League

On page 117 of our 1965 Report we said that the Young People's Socialist League at the Berkeley campus of the University of California was a Trotskyite-Communist organization. Dr. Kerr replied that it is affiliated with the Socialist Party of Norman Thomas, and is strongly opposed to Communism. Maybe Mr. Thomas is opposed to Communism, but certainly this cannot be truthfully said about some of the more militant chapters of the YPSL—which is sharply divided into radical and moderate elements. This division was recognized in the pro-Communist press, as indicated by a *National Guardian* article that appeared in the September 25, 1965 issue of that paper. Speaking of the components of the New Left it said:

> "Among youth organizations in the generational New Left are the Marxist and Socialist groups who see Socialism as a long-range goal to be won through radicalized coalition of mass movements (the W.E.B. DuBois Clubs of America, and the *few* [our italics] remaining 'loyalist' chapters of the Young People's Socialist League) and those who are concerned with

[21] See: *Guide to Subversive Organizations and Publications,* U.S. Government Printing Office, Washington 25, D.C., 1961 ed., p. 44.

[22] See: *Oakland Tribune,* December 16, 1951 and December 23, 1952.

organizing revolutionary socialist parties as the only viable tactic (the Young Socialist Alliance, Youth Against War and Fascism, the Spartacists and possibly the May Second Movement.)"

Contrary to Dr. Kerr's conception of the anti-Communist character of the Berkeley YPSL, it took part in the founding convention of the new Communist youth group at San Francisco in July of 1964, from which the DuBois Clubs of America emerged. And in the summer of 1965 it was still playing its appropriate role through collaboration with the Bay Area Vietnam Day Committee, contributing an article to a pamphlet issued by that organization entitled "Did You Vote for War?"

The Berkeley Chapter of the YPSL played such a vital part in the VDC activities, and in sponsoring illegal trips to Cuba, that it earned the gratitude of the largest Communist youth group in the world, the International Union of Students, which expressed its thanks to the Berkeley YPSL and the Berkeley campus of the University in its publication dated August 15, 1965, p. 7. We believe that the IUS is a better judge of the alleged anti-Communist attitude of the Berkeley YPSL than is Dr. Kerr.

There is, of course, a background to the Trotskyist infiltration of the YPSL. Originally that organization was, indeed, a purely Socialist youth group patterned after the Norman Thomas Socialist Party. But the Socialists foolishly agreed to accept Trotskyites into their organization, provided they were assured by the leaders there would be no attempt at factionalism. But factionalism to the Trotskyites is as natural as breathing, as is well known throughout the ranks of all Marxist movements. And when the bars were lowered the inevitable occurred. The factionalism drove deep into the heart of the adult Socialist Party, and deeper into the heart of its youth section, the YPSL. The younger Socialists were more receptive, because they were attracted by the action and excitement that always accompanies a Trotskyist group. The lure of demonstrations and militant action proved irresistible to many of the local chapters, and there developed a factionalizing operation that went ahead unabated in many areas, Berkeley among them. The Norman Thomas "doves" and the Trotskyist "hawks"

struggled for control. In our opinion the "hawks" won at Berkeley.

Sidney Hook mentioned the intrusion into the Socialist Party as follows:

> "Draper was a Trotskyist who left the Socialist Party when the Trotskyists were exposed as a faction conspiring to take over the Party in flagrant violation of the pledged word of their leaders to refrain from factionalism—the condition of their acceptance." [23]

Further mention of severance of connections between the Socialist Party and some of the more militant chapters of the YPSL appeared in *National Review Bulletin* on December 8, 1964, page 2, which stated that ". . . a faction gained control which does not accept a loyal relationship to . . . basic democratic socialist principles."

Sam Kagel

We mentioned Professor Sam Kagel on pages 10, 68, 69, 70 and 74 of our 1965 Report. Our purpose was to show Mr. Kagel's relationship with the California Labor School and its predecessor in San Francisco, the Tom Mooney Labor School. They were the same institution; only the names were different. The directors of both, Holland Roberts and David Jenkins, were exposed as Communists. Dr. Kerr scolded us a bit on page 14 of his critique for calling this establishment the *Communist school,* and said "it was the California Labor School." Actually, it was both, according to the indisputable official record. It was declared to be a Communist operation by the Subversive Activities Control Board, and as such ordered to register with the United States Attorney General.[24]

We believed when we released our report, and we still believe, that a person who had been closely enough connected with a Communist school to have been listed in its catalogues as a lecturer or teacher several times should have disclosed that fact when applying for a position

[23] See: "Second Thoughts on Berkeley," by Sidney Hook. Reprinted from *Teachers College Record,* Vol. 67, No. 1, October 1965, p. 16.

[24] See: *Guide to Subversive Organizations,* U.S. Government Printing Office, Washington, D.C., 1962, p. 37.

at a state university. We have included as exhibits some photocopies of those catalogues listing Professor Kagel, and will allow them to speak for themselves. (See Exhibit, page 47.) Whether he actually spoke or lectured on each and all of the occasions he was slated to do so is not especially pertinent to our inquiry. What is important is the fact of his intimate connection with the school. He certainly did appear as scheduled on at least one occasion. We also call attention to the fact that he received appropriate notice in the Communist press.[25]

[25] See: *People's World,* October 18, 1943; January 29, 1944; September 18, 1944; April 9, 1945.

Tom Mooney

LABOR SCHOOL

FALL TERM, 1943



Education for
VICTORY

FALL TERM CALENDAR

REGISTRATION: Registration for courses will begin September 20, and will continue until the end of the second week of classes. Early registration is advised, since classes are limited in size. School will be open for registration Monday through Friday, 10:00 A.M. to 5:00 P.M. and 8:00 P.M. to 9:00 P.M., and Saturdays from 10:00 A.M. to 1:00 P.M.

TERM: Classes will begin the week of October 18 and continue for eight weeks. Classes will be held at 678 Turk Street, in the Tom Mooney Labor School.

SESSION: Classes will meet weekly for eight two-hour sessions except where otherwise indicated.

FEES: The regular fee for courses is $4.25 for the term, except where otherwise indicated. Fees are payable in advance. This includes a nominal library fee.

EXTENSION COURSES: The School will give extension courses upon request of groups wishing to meet in union halls, community clubrooms or in homes of students.

SERVICES TO TRADE UNIONS: The services of the School are available to trade union educational directors or business agents for planning courses or for developing educational programs for their unions. The School will arrange for classes to be taught at either the School or union halls.

STUDENT COUNCIL: The Student Council is composed of student representatives elected from each class in the School. Educational and social activities of interest to the student body and general public are arranged and carried out through the Council.

CULTURAL: The School has an extensive program of cultural activities, one of which is an Art Gallery which will arrange exhibits of interest to the trade union movement and the general public.

LIBRARY: The School has collected for the study and use of students a comprehensive labor library of three thousand volumes, pamphlets, and periodicals. Contributions and books to the library are solicited. Library hours are 10:00 A.M. to 5:00 P.M., and 7:30 to 10:00 P.M. on weekdays; and 10:00 A.M. to 1:00 P.M. on Saturdays. For non-students Library Privileges are $1 per year.

LABOR

TRADE UNION LEADERSHIP I

Instructors: Jack Olson, Business Agent Warehousemen's Union Local 1-6; David Williams, Business Agent Pile Drivers Local 34, AFL.

MONDAY — 8-10 P.M.

Theory and practice of labor organization. This course is divided into two parts:

(a) The wartime program and policies of organized labor and the problems confronting labor nationally.

(b) The inner functioning of a trade union (organizational methods, functions and procedures of union committees, shop stewards' systems).

TRADE UNION LEADERSHIP II

MONDAY — 8-10 P.M.

A series of discussions for union leaders:

Collective Bargaining in Wartime: Sam Kagel, War Manpower Commission; Paul Chown, War Labor Board and Steel Workers Local 1798.

Wage Stabilization: Mathew Tobriner, American Federation of Labor attorney. A Description of the Relationship of War Agencies with Labor Cases: Paul Chown, War Labor Board

How the Business Agent Can Get His Own Facts: Maurice Gershenson and Frances Moore, State Division of Labor Statistics.

Incentive Pay Plans: Paul Chown, Louis Fowlks, War Production Board Paul Pinsky, CIO Research Director.

HISTORY OF THE AMERICAN LABOR MOVEMENT

Instructor: Elinor Kahn

MONDAY — 8-10 P.M.

This course traces the growth of trade unionism in America from its beginnings shortly after the Revolution to the present-day trade union organization of more than 15 million workers. The changing functions of trade unions in a changing society and the movement of labor towards independent political action will be discussed. Major attention will be paid to the significant contribution labor has made to preserve and extend American democracy and to labor's vital role throughout American history in defending the nation.

PUBLIC SPEAKING AND PARLIAMENTARY PROCEDURE

Instructor: Stephen Hamilton

TUESDAY — 8-10 P.M.

This course, designed for trade unionists and others, will deal concretely with the problems involved in chairing a meeting, leading a discussion, giving a report, making a membership appeal, and with effective speaking generally. It will also deal with the essentials of parliamentary procedure to give practice and competence in democratic meeting procedures. The class will be limited in size so that each student may have a frequent opportunity to present informally prepared talks to the class and to receive constructive criticism

JOURNALISM

WEDNESDAY — 8-10 P.M.

This class is officially sponsored by the American Newspaper Guild and will be taught by Guild members. It is a twelve-weeks course, and will cover general and labor journalism and newspaper organization. It will be a practical training course with assignments and criticism of work assigned by the instructors.

PHYSICAL EDUCATION

PHYSICAL FITNESS FOR WOMEN

Instructor: Klarna Pinska.

MONDAY — 7-8 P.M. and WEDNESDAY — 718 P.M

The exercises given include posture, tension and relaxation exercises which were first developed by Dr. Bess Mensendieck. These exercises do not tire but invigorate the body. The course is of particular benefit to defense workers and business women. Fee is $2.00 if another course is attended, otherwise, fee is $4.00.

A CLASS IN DANCING

Mrs. Bonnie Gundlach, formerly a member of the Martha Graham dance troupe, has consented to teach a class in dancing, if registration is sufficient. For further information consult the office.

ENGLISH I

THURSDAY — 8-10 P.M.

A course especially for foreign-born workers. Learning to read and write, as well as speak, the language of your adopted country, is not difficult with a little application. A common language will aid all national minorities in their war and peace relationships with each other and with native Americans.

ENGLISH II

THURSDAY — 8-10 P.M.

A class for foreign-born workers and workers who have difficulties in English. It is limited to those students who have taken an elementary course in English.

Monday	*Tuesday*	*Wednesday*	*Thursday*	*Friday*
Trade Union Leadership I	Elementary Economics	War Economics	English I	Practical Politics
Trade Union Leadership II	History of American Thought	Origin and Development of the War	Drafting, Shop Mathematics, and Blueprint Reading	
History of the American Labor Movement	Public Speaking and Parliamentary Procedure	Journalism		The Press, Propaganda and the War
Introduction to Philosophy	History, Culture and Future of the Negro People	People's History of the United States	English II	America and the Pacific Peoples
Physical Fitness 7 to 8 P.M.		Physical Fitness 7 to 8 P.M.		Mathematics Refresher

TOM MOONEY

LABOR SCHOOL

WINTER AND SPRING, 1944

• CLASSES BEGIN FEBRUARY 7TH •



EDUCATION FOR VICTORY

Labor Classes

You and Your Union

Instructors: George Hayward, Business Manager, Dry Dock, Marine Waysmen, Stageriggers and Helpers, Local 2116
Jack Olson, Business Agent, Warehousemen's Union, Local 1-6

MONDAY — 7:30 - 9:30 P. M.

This course will emphasize the WHY and HOW of trade union structure, methods, program, purpose and policy and will seek to equip those who are taking it with a sound basis for building unions and meeting their problems. It will discuss the shop steward system, craft and industrial unions, collective bargaining, political action and its relation to union activity. It will also include a brief history of trade unionism and the principles on which trade unions were established. All these will be studied in the light of the new responsibilities of unions in the war.

Trade Union Leadership

A class for union officials and leaders:

TUESDAY — 7:30 - 9:30 P. M.

Collective Bargaining in Wartime: 2 sessions: Paul Chown, War Labor Board and Steel Workers Local 1798

Wage Stabilization: 2 sessions: Mathew Tobriner, American Federation of Labor attorney
Varden Fuller, Teamsters' Council

Labor and Politics: 2 sessions: Louis Goldblatt, secretary-treasurer, International Longshoremen's and Warehousemen's Union

Manpower Situation in the Bay Area: 1 session: Sam Kagel, Regional Director, War Manpower Commission

Facts About Compensation Procedure for Business Agents: 1 session: Alex Watchmen, State Accident Commissioner

History of the American Labor Movement

Instructor: Jack Wagner, Organizer, Technical Engineers, Local 89—Co-author of "Victory Through Unionism"

WEDNESDAY — 7:30 - 9:30 P. M.

This class will cover the unions in the period of the American Revolu-

tion; in the period from 1800-1860, and in the Civil War. The growth of great labor movements and the fight for an 8-hour day. Formation of American Federation of Labor, its policies, program and structure. Other labor organizations—Knights of Labor and Industrial Workers of the World. Forces behind the birth and growth of the CIO; labor's role in the present war and post-war period.

Public Speaking and Parliamentary Procedure

Instructor: Bernard Firestone, negotiator, National Labor Bureau

WEDNESDAY — 7:30 - 9:30 P. M.

This course, designed for trade unionists and others, will deal with the problems involved in chairing a meeting, leading a discussion, giving a report, making a membership appeal, and with effective speaking generally. It will also deal with the essentials of parliamentary procedure to give practice in democratic meeting procedures. The class will be limited in size so that each student may have a frequent opportunity to present informally prepared talks to the class and to receive constructive criticism.

Advanced Public Speaking

Instructor: Stephen Hamilton, public speaker and radio news analyst.

TUESDAY — 8 - 10 P. M.

This course is open to students who have completed the first public speaking course or trade union officials and members of organizations who have had some years of speaking experience. It will be a laboratory class wherein students will speak before an audience. There will be analyses of speeches and criticism by the class. Experience in extemporaneous speaking will also be secured. Students' entrance into the class will be subject to approval of the instructor.

Practical Journalism

Instructors: Eric Erickson, head of copy desk, San Francisco Call-Bulletin; Mike Jay, San Francisco newspaperman; Fred Lowenstein, San Francisco Examiner

FRIDAY — 8 - 10 P. M.

This class is officially sponsored by the American Newspaper Guild and will be taught by Guild members. It is a ten-weeks course and will cover general and labor journalism and newspaper organization.

ALL CLASSES—8-10 P. M.—Except where otherwise designated

Monday	*Tuesday*	*Wednesday*	*Thursday*	*Friday*
You and Your Union 7:30-9:00 P.M.	American Thought	Labor History 7:30-9:00 P.M.	English	Nations in War
World Politics	Trade Union Leadership 7:30-9:00 P.M.	Radio	Life Class	Dramatics 7:30-9:30 P.M.
What Is Philosophy?	Politics in 1944	People's History	Large Crafts	Journalism
Economic Theory	Public Speaking II	Incentive Pay 7:30-9:30 P.M.		
Small Crafts	Layout	Economics for Trade Unionists 7:30-9:30 P.M.		
Vaudeville and Skits 7:30-9:30 P.M.		Public Speaking 7:30-9:30 P.M.		

Day Classes

DAY CLASSES — 11 A.M. - 1:00 P.M.

World Politics—Monday
People's History—Tuesday
Current Events—Wednesday
You and Your Union—Thursday
Journalism—Friday

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DAY AND
NIGHT
CLASSES

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IN SAN FRANCISC

education for victory

Illustrative of the type of problems discussed are the following:

Improved Supervision — the goal of Job Methods Training, Job Relations Training and Job Instructor Training.

How supervisors can most quickly and effectively teach new workers their jobs.

The Returning Veteran and his opportunities for apprentice training.

Vocational Training — its relationship to accident rates, upgrading and improved supervision.

Production Control—its relationship to supervisory and technical training.

Apprenticeship Training — its dollar and cents value to workers and management.

The course will meet once weekly for ten weeks as follows:

Introductory symposium of the Training Agency speakers, who will present their views and indicate the general direction of the following sessions.

Three sessions of three weeks each, dealing in turn with the programs of Training Within Industry, the Apprenticeship Training Service and the California State Department of Education.

FULL EMPLOYMENT — THE ROAD TO SECURITY

Chairman: Sam Kagel, State Director, War Manpower Commission, Northern California. Associate Chairman: E. F. Halloran, Deputy Director War Production Board, Tenth Region, and Chairman, San Francisco Area Production Urgency Committee. Coordinator: David Jenkins, Director, California Labor School. Representatives of management and labor from specific industries to be announced.

TUESDAY: 8:50-10:20 P.M.
Fee: $6 for full ten weeks
Reduced rates for one or more sessions

A course for all sections of the community — industry, labor, government and general students, which takes the positive view that stable industrial relations must be based on a progressive program of full employment.

The victories of peace, including full employment, will require the planning and unity of purpose necessary for the victories of war. It is recognized that war production schedules take first place, and the planning for peace production and reconversion is secondary. Nevertheless, some important planning on full employment and reconversion is necessary and is in fact progressing. To highlight the current problem and to insure realistic discussion, the material will be presented for several key industries in the area, with representatives of industry and labor participating in the sessions.

In addition to the specific discussion of the individual industries, the following problems will be related to each industry for the purpose of providing a unified course dealing with the over-all problems of the community.

Full Employment and Reconversion — a job for industry alone? Labor alone? Government alone?

Productivity — and its relation to management's production control and union rules.

Markets — foreign and domestic.

Wages — and their relationship to purchasing power and prosperity.

Union and Business Security.

Other problems will be raised on the basis of group discussion and current developments.

The course will meet once weekly for ten weeks, as follows:

Introductory symposium will present labor, management and government

spokesmen on the problems and general program for full employment and reconversion.

The following sessions will relate the over-all problems to their specific industries and services, with representatives of management and labor participating from these industries: Maritime and Ship Services, Longshoring and Warehousing, Consumer Goods & Services, Canning and Agricultural Products, Steel and Machine Tool, Oil and Chemical, Housing, Lumber and Construction, Transportation and Communications.

Concluding symposium, summarizing the material, problems and programs of management, labor and government on reconversion and full employment.

CURRENT LABOR MANAGEMENT GOVERNMENT RELATIONS

Chairman: Stanley Bailey, Industrial Relations Expert, San Francisco Chronicle; Coordinator: Irwin Elber, California Labor School; Associate Chairmen and Discussion Leaders: Wesley O. Ash, Regional Director, Wages & Hours Divisions, U. S. Dept. of Labor; Paul Eliel, Chairman, Pacific Coast Maritime Industry Board, War Shipping Administration; J. Paul St. Sure, Attorney; Mervyn Rathborne, Secretary-Treasurer, California CIO; J. Herbert Geoghegan, Executive Assistant to AFL Members, Regional War Labor Board.

WEDNESDAY: 7-15-8:45 P.M.
Fee: Full ten weeks: $6
Two 3-week sessions: $4
One 3-week session: $2

A practical labor relations course for union, management, government officials and general students, dealing with the present-day factors going into stable labor relations.

This course takes the positive view that the peaceful relations now existing between labor and management must continue and improve during the final stages of the European war and the coming all-out offensive for victory in the Pacific. It is no less important that labor, industry and government carry on the harmonious team work which has proved so effective for war; and apply it to the progressive solution of the vital problems of full production and full employment during the peace to come.

Illustrative of the problems discussed are the following:

Business Security — the concern of the employer alone, or of the entire community?

Union Security — the concern of the union alone, or of the entire community?

The Role of Government — a help or hindrance to unity between management and labor?

Production Controls — and their relation to the rights of management.

The Veteran — his rights in, and his contribution to, the postwar world.

Which Way to Prosperity for Employers — with Sewell Avery or Eric Johnson?

Additional problems are dealt with on the basis of group discussion and current developments.

The course will meet once weekly for ten weeks as follows:

Introductory symposium of the Labor, Management and Government speakers, who will present their views and indicate the general direction of the following sessions.

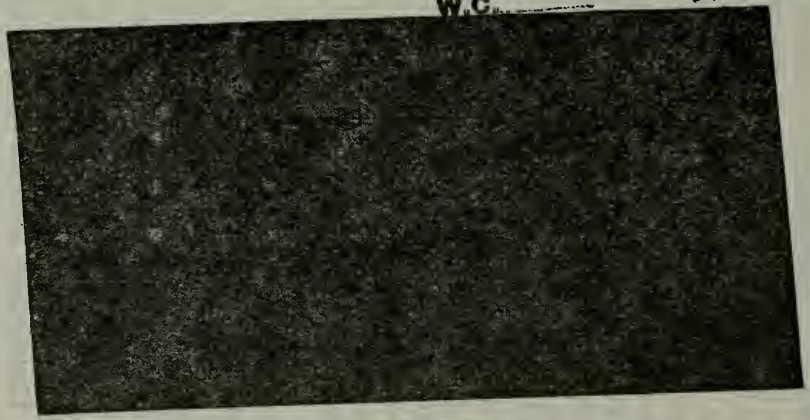
Three sessions of three weeks each, dealing in turn with the Rights and Responsibilities of Labor, Rights and Responsibilities of Management and the Rights and Responsibilities of Government.

CALIFORNIA LABOR SCHOOL
216 Market Street San Francisco 11, California

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President Kerr and the Regents

On Page 125 of the Report we discussed at some length the almost complete dependence of the Board of Regents on President Kerr for information as to University affairs and guidance for appropriate action. We noted that an innovation introduced by Kerr, "private, off-the-record sessions . . . immediately preceding the formal Regents' meetings," have served to make the latter merely a public show, the real decisions having been formulated in advance. It is neither a frank nor an accurate answer for Kerr to say, as he does here, that "fewer actions have been subject to treatment in executive sessions since I became President than before . . ." The private sessions we described are not formal "executive sessions," however, and often included only a few selected Regents.

In President Sproul's day, executive sessions of the full Board and of its committees were of one kind only—regular executive sessions at which members of the executive staff were present. The minutes of these meetings were duly transcribed. President Kerr inaugurated two additional kinds of executive sessions: "Regents Only" *formal* executive sessions, and "Regents Only" *informal* executive sessions. Minutes of the latter meetings were rarely transcribed.

Preliminary meetings of the President with factional groups of Regents, especially when there is no record of the proceedings at such sessions, tend to keep the Board out of contact with the underlying facts when critical situations are presented for consideration. All of these measures to limit the Regents' access to information and advice about University affairs have occurred during an era when the opposite tendency has been growing elsewhere: a generally changed view of the importance of openness in government. Ever since passage of the Brown Act in 1953, requiring public bodies to conduct their business in public to the greatest possible degree, one agency after another has been pressed to accommodate itself to this view. Only recently has the full force of this pressure been applied to the Board of Regents, leading to the adoption of a rule restricting these executive sessions to pending litigation, national defense security, and personnel matters. There is reason to question whether the outward change has actually done very much

to eliminate these private and unreported preliminary sessions.

The Report noted that "no other members of the university administration [than the President] . . . were permitted to attend" the preliminary meetings, and that "faculty members, students . . . [and] members of the administration" are required to go "through the President's office" in order to communicate "with the Regents or with state officials" on University matters. President Kerr replies that "most governing boards of large organizations . . . [rely] for information primarily on its [sic] executives and staff committees." The plural ("executives") here contrasts with the singular ("the President") noted in the Report. Even though he states: "I know of no instance in which the President has ever refused to inform the Board of such a communication," it takes a bold member of staff, faculty, or student body to make pointed criticism of the President and send it through him to the Regents or state officials. The system tends to shield the President from criticism, and the "innovation" introduced "during the Kerr administration"—the previously discussed private meetings—goes still farther toward making the Regents reliant on Kerr alone for facts and advice.

Radical Groups Capitalize on Rule Weaknesses

The University administration's attitude toward Communism was discussed under the second of the "three general points" raised in Section II of Kerr's Analysis. He takes exception to a statement in the Report (page 52): "It seems strange that despite the Regents' policy of not tolerating Communists as employees of the University, the administration welcomes Communist organizations, throws the portals open to Communist speakers, and exhibits an easy tolerance of Communist activists that defies all reason." President Kerr's comment is that the University does not adopt a "favorable attitude" toward these "student organizations" and speakers, but that any "groups and speakers who qualify" under the University rules are admitted; at the same time, "a group also has . . . the responsibility of observing campus regulations," and he cites the denial of on-campus status to SLATE in 1961 for violation of regulations.

These differences of viewpoint and the facts on which they hinge are crucial and deserve careful consideration. A "student organization" on most campuses, and formerly at the University of California, has been deemed to be a group composed of students. Under pressure of the radical student minority at Berkeley, it has been redefined to mean an organization whose "active members" are students, faculty, or staff, or were students during the preceding semester; and "active membership" has been tacitly defined at Berkeley to mean the holding of office. Thus, a group may qualify under University rules for the almost unlimited use of campus facilities, even though many of its members are non-student radicals, engaged in full time revolutionary or even criminal activities. When Vice Chancellor Cheit, following an informal talk in which he had acknowledged that many of the campus problems arose from the participation of non-students, was asked, "Why, then, do you define a 'student organization' so as to admit non-student participation?" he replied, "Frankly, we made a mistake." That mistake, however, has never been corrected.

The rules under which speakers must qualify state only that the speakers be sponsored by "registered student organizations." Though the Regents have never formally accepted the principle demanded by rebel groups in the faculty and in the student body—that the University may take no cognizance of the content of speech nor of who is to do the speaking—the tacit acceptance of this rule by the President and its explicit acceptance by the Chancellor at Berkeley put speakers completely outside the control of the University. President Kerr has admonished the public at large to place evidence of illegal action on campus before the law enforcement agencies of the outside community.

This disclaimer of responsibility for the legality, or decency, or educational value, or any other value of speeches widely disseminated with the aid of University facilities to an often captive audience is alarming to this Committee. The "rules" nominally require that no unwilling audience shall be compelled to listen to any speaker's remarks; but the use of Sproul Hall steps and a powerful public address system for the "open forum" makes this rule farcical. Anyone desiring to use this most heavily-traveled entrance to the campus when a "rally"

is being held must thread his way through a crowd that clutters the area and he cannot help but hear the speaker long before he reaches the crowd and after he leaves it. Patrons of the campus restaurant and the Student Union, occupants of Sproul Hall, and those who come there on business cannot avoid the speaker's words. Those who would like to eat their lunches on the many benches around the plaza must seek another place or tolerate this assault. The control of sound volume by a University custodian was introduced as a gesture rather than as an effective means of eliminating the captivity of an audience.

The statement that "a group also has . . . the responsibility of observing campus regulations" is next to meaningless today as it has been since September, 1964. Perhaps that is why President Kerr had to reach back to 1961 to illustrate this supposed measure of control. Student rebels have denied any obligation to obey rules and have made their denial effective by their conduct, not only during the stormy days of 1964–1965, but even today.

Pious Disclaimers

The Analysis proceeds from this point to a new number series of three items, under the heading, "Pious Disclaimers," all intended to attack the form of statement we have made from time to time: that we do not make charges of subversive affiliation on the basis of the limited evidence available to us in many cases, but that we do think even this limited evidence of a pattern of cooperative association with persons and organizations engaged in Communist-related activities ought to be made available as a basis of judgment. As we have indicated in our introductory remarks, the practical judgments of legislators and everyone else must be formulated on the basis of the best information available, even though such information is rarely complete. When the information relates to activities that tend toward the criminal side, complete information is seldom available. It is the less-than-"actionable" evidence (recalling Kerr's insistence on "actionable" evidence or silence from his critics) that is most important in understanding the development of major subversive movements such as have disrupted the Berkeley campus and have led to similar, though less

advanced, disruptions at colleges throughout the nation.

Since it seems so difficult for a scholar like President Kerr to understand our repeated explanations of this viewpoint, it may be helpful to call attention to a related viewpoint in another setting. As is well known, the Fifth Amendment, designed to protect the innocent from forced self-incrimination, has shielded many who were obviously guilty of crimes. Yet, generous as our courts have been in extending this protection, they still recognize that sensible people must draw some inferences and conclusions from an accused person's unwillingness to testify. In a recent murder case, in which the United States Supreme Court ruled against California's constitutional provision that a judge or prosecutor may draw the jury's attention to the defendant's failure to testify, both the majority and dissenting opinions acknowledged that the jury is sure to weigh this fact in with the others on which they base their verdict. On Fifth Amendment grounds, however, the court and prosecutor are now barred from pointing to the fact; but, as Justice Stewart noted in his dissenting opinion: ". . . the members of the jury are bound to draw inferences from his silence. No constitution can prevent the operation of the human mind." [26]

Similarly, the inferences to be drawn from a series of facts, none sufficient to convict a person of subversive affiliation, may be important in arriving at a useful judgment, even though the rules under which our courts operate keep this information from being "actionable" evidence.

Dr. Kerr quotes (with slight errors of page reference and text language) from page 65 of the Report that "radical student organizations were given official university recognition," and counters once more with the statement that "all student organizations, regardless of political orientation, which complied with certain standard requirements were given recognition." Whether naively or cleverly, this reply glosses over the two critical changes he introduced into the situation. Formerly, student organizations were *not* allowed to use University facilities as they are today "regardless of political orientation." If they had political orientation

[26] Griffin v. California, 380 U. S. 609 (at p. 623), April, 1965.

of any kind, in the sense of conducting activities designed to support political causes, to raise funds for them and to gain recruits and organize off-campus pressure tactics on the community, they were forbidden to use campus facilities. Discarding that rule was of inestimable aid to Communism, whether President Kerr intended it to be so or not.

The "standard requirements" to which President Kerr refers have also been discussed above. By allowing non-students to participate, not only through the presence of one or two adult leaders, who in many cases spend full time at their revolutionary activities, but even to the extent of a large fraction of the membership of a "student organization," he has allowed a left-wing domination of the campus scene. These are the only "student organizations" that can devote the time and effort and that have developed the skill in maneuvering that is required to monopolize the opportunities for propaganda and fund-raising afforded by the new campus system. Even the innocent effort of the freshman class to put on a skit advertising their class dance, for which the class was duly granted a permit for the use of Sproul Hall steps early in February, 1966, was shoved aside by the Vietnam Day Committee. The freshmen wrote to Chancellor Heyns: ". . . there was absolutely no mix-up (as claimed in defense of the VDC) . . . we were the only group for whom the steps had been reserved . . . it seemed as if someone were preaching freedom of speech for everybody, but more for some." The VDC leaders acknowledged that "it was our own fault . . . We did not mean to intimidate them out of the steps"—but, they did.[27]

President Kerr also quotes the Report, page 67, concerning his "reluctance to curb the activities of the most brash and defiant student rebels." His retort in full is worth noting: ". . . eight students were suspended and hundreds of others tried in the courts *with no intervention by the University.*" (Our italics). This goes to the very heart of the matter—"no intervention by the University." The administration of the campus under Chancellor Strong sought to intervene on an earlier occasion, when a police officer and his prisoner were held captive

[27] *Daily Californian,* February 11, 1966.

in an official car by a criminally rebellious group; but President Kerr saw to it that there was "no intervention" then, and the rebels scored one of their greatest victories. As one of their leaders, Arthur Goldberg, announced in four-letter language from the top of the police car, "We've got Clark Kerr scared (to death) . . ." On the occasion to which President Kerr refers, when hundreds were tried and convicted for the December 2, 1965 sit-in, there was again "no intervention by the University"—the Governor had to act, since the President would not.

"Half-Truths and Distortions"

The Analysis enumerates another series of points under this heading. Again we use its numbering.

1. This is a lengthy critique of the Report's treatment of the Communist-dominated California Labor School, which the Report frequently refers to in context as "the Communist school" (a term President Kerr finds objectionable). In President Kerr's view, this school started innocently enough but changed its nature as it "did come under increasing Communist influence" which led to its being "eventually placed on the Attorney General's list of subversive organizations." The condition which led to the action by the Attorney General, Kerr contends, "was not the case at an earlier period." He then points out that the school was even accredited for training under the G.I. Bill of Rights in 1945–1946 and names some of its distinguished sponsors "as listed in its 1945 catalogues." But the California Labor School did *not* begin innocently. It was a Communist institution from its inception, as we have explained and documented on many occasions. As a lineal descendant of the old Workers' Schools, this Communist indoctrination center was placed on the subversive list by the U. S. Department of Justice, after investigation by the FBI, and hearings before the Subversive Activities Control Board.

It must be made clear that not everyone who attends or "sponsors" or accredits a Communist-dominated institution or organization does so to aid Communism. Typically, only a few insiders know of the Communist influence in the beginning; hence, those who associate themselves with such an organization in its early stages

or who lend their names as "sponsors" with no intention of thereby creating any genuine association should be given the benefit of the doubt. In our Reports, we cite such associations only when many other similar associations and related activities seem to create a meaningful *pattern* of behavior on the part of the individual in question. The pattern we recognize in the sponsorship, by wealthy or politically influential citizens, of a great many organizations with names suggesting civic good is their continuing interest in community welfare. If some of these organizations turn out to be Communist fronts, we recognize that the prominent citizen is subject to deception like anyone else. Actual participation in the affairs of the organization, however, and similar engagement in the activities of other Communist-dominated groups, especially if participation is at an influential level, present a quite different pattern. These are the patterns to which we draw attention in our Reports.

The Report (pp. 8–9) comments on the "astounding spectacle of a great university lending its physical facilities, its dignity and its prestige" to the California Labor School by jointly sponsoring a two-day Institute on the Berkeley campus in 1946. President Kerr again recites the Labor School's accreditation and sponsorship as of that date and points out that it was University Extension that joined in sponsorship, not the Institute of Industrial Relations, of which he was then Director. There is a point of some interest here which his critique adds to our Report.

The Report in no way associated Clark Kerr with the joint venture described above, since Robert Gordon Sproul was then President. We did state that the unfortunate event helped to induce President Sproul "to establish a security officer at Berkeley," to guard against recurrences. President Kerr notes additionally that his Institute of Industrial Relations had been tentatively listed as co-sponsor without his knowledge but that: "Because I had already had some personal doubts about the California Labor School, I insisted that the Institute's name be withdrawn as sponsor and I declined to participate in the sessions." What we find interesting is his elaborate defense of the innocence of the California Labor School in its early days, concurrent with his own recognition, at that time, of its evident Communist affilia-

tion. Perhaps the latter phrase will be criticized by President Kerr as being different from his exact words; this defensive technique has been used at various points throughout the Analysis. We cannot interpret his "personal doubts" and insistence on complete withdrawal as signifying anything less than such recognition.

President Kerr professes to believe that a "telling use of the half-truth technique occurs on page 67 . . . , where the Report refers to the 1953 trial of Joseph Weinberg for perjury . . . The Report fails to disclose the rather pertinent information that the jury found Weinberg 'not guilty.' " In order to let the reader judge how "pertinent" the omitted information was with respect to the matter under discussion, we quote one newspaper's account essentially in full:

"Dr. Joseph W. Weinberg—the man called 'scientist x' during a Congressional investigation of alleged atomic spying—was acquitted today of falsely swearing he had never been a member of the Communist Party. U. S. District Judge Alexander Holtzoff, who presided over the seven-day trial, said he didn't agree with the jury's verdict. The judge told the jurors he had no doubt they approached the case conscientiously and said he respected their decision 'even though the court does not approve of your verdict.' . . . *Judge Holtzoff said the testimony disclosed 'an amazing and shocking situation existing in the crucial years of 1939, 1940, and 1941 on the campus of a great university in which a large and active Communist underground organization was in operation.'* " [28]

The Report cited only the underlined portion. We believe President Kerr is mistaken in thinking the rest of the article "pertinent" to the discussion of Communist infiltration of the Berkeley campus.

"Telescoping of Time"

The next caption in the Analysis is "Telescoping of Time," with five numbered items to support the claim that the Report errs in associating events widely separated in time. One of the cardinal characteristics of Communist activity of the last half century is its invasive

[28] *Los Angeles Times,* March 6, 1953. Only the "Complete Racing" edition carried this account; Stalin's death squeezed it out of other editions.

growth into the tissues of our society. This figure of speech is used to emphasize the analogy to cancerous growths in the tissues of a living organism. The growth may be checked for a time, but rarely recedes; its initial attack at one site is typically followed by metastases to other sites. Similarly in the social organism, the destructive change proceeds slowly at unfavorable times and more rapidly at others, advancing from a focus in which it has become entrenched to other, distant sites. The time scale in the social cancer is different; hence, appreciation of the extent of its progress requires examination and correlation of events that have indeed occurred at very different times. In our view, that fact *enhances* rather than diminishes the importance of the association because it gives evidence of the persistence and determination of those involved in the Communist movement. The presence of sons and daughters of old-time members of the Communist Party in the Du Bois Club, SLATE, the FSM Steering Committee, the VDC, Students for a Democratic Society, and other groups we have named tends to show that the revolutionary aims of the parents have not been allowed to depend only on their own physical survival. The gains they have made here and there have been stubbornly held; further advances have been made when possible and the new territory consolidated as soon as practicable with the old; and the revolutionaries of the future have been trained in the home as well as elsewhere.

Here are the specific points President Kerr raises in this section:

1. "On p. 16 the Report discusses the 'united front' . . ., and this leads to a two-page discussion of 'another great united front movement'—the San Francisco General Strike of 1934. . . In similar fashion the Report works in discussions of (a long list of Communist-inspired events)." The list President Kerr recites is drawn from many parts of our 177-page Report and pulled together by him into a *single sentence* ending with "etc." If "telescoping time" so disturbs President Kerr, it is surprising that he uses the equivalent technique in assembling his illustrative references.

We might have presented a sufficiently extensive history of worldwide Communist subversion to tie together the incidents that he joins by a succession of commas. Instead, we used various incidents throughout the docu-

ment to illustrate specific Communist techniques, and piling them one on another is an attempt at ridicule by Kerr that we trust will not deceive the careful reader. For example, the first item in his composite list of "discussions" is "student activities at the College of the City of New York in the 1930's." If any reader doubts the parallel to events at Berkeley in 1964–66, he need only re-read pages 19 and 20 of the 1965 Report. He may then note, on page 58, the history of an alumnus of that CCNY revolt, Professor Leon Wofsy of the Berkeley faculty; and he may find, on page 80, how the foothold gained at CCNY in the 30's was broadened to make the City College of New York a near counterpart of Berkeley as a revolutionary focus. Even Kerr's initial reference to the San Francisco strike should be re-read by those who are unfamiliar with the "united front" technique by which Communists make use of unsuspecting liberals.

Leon Wofsy

While on the subject we will deal here with all matters pertaining to Wofsy which Dr. Kerr raised in his Analysis. On page 20 he states that our 1965 Report noted that the University had nothing more than Wofsy's simple statement to the effect that he had become disenchanted with Communism and left the movement in 1956. He further asserts that we had presented no shred of evidence that Wofsy had anything to do with Communism after that date. We did not present such evidence in the report, but we have since discovered that at the very time Kerr made the assertion, he himself possessed more than a "shred" of evidence about Wofsy's post-1956 Communist activities. Apparently he did not see fit to say anything about it in his critique. Dr. Kerr had this evidence since June 8, 1964.

In view of the Kerr statements and those made by Dr. Wofsy in a letter to a newspaper dated June 10, 1965, we have undertaken to inquire further into the matter in order to reply to President Kerr's criticism and to bring the Wofsy case up to date in this supplemental report. Official documents show that Kerr regarded the Wofsy case as fraught with "considerable risk in view of the long record of Communist Party activity and commit-

ment."[29] Kerr was so concerned that he suggested covering any major criticism by drafting a "carefully-written letter making known our concern about reported past activities which Wofsy had acknowledged, to make clear that we regard these as necessarily terminated in the interest of pursuing a scholarly career."[30]

Immediately after Wofsy applied for the Berkeley position as Associate Professor, letters were received from many of his colleagues, attesting to his scientific proficiency and urging that the appointment be approved. Among these letters were ones from Martin Kamen, Michael Doudoroff and Roger Stanier. Kamen was then employed at the San Diego campus of the University, the other two at Berkeley. There was also a letter from Wofsy to Dr. Sanford S. Elberg, Professor of Bacteriology and Immunology at Berkeley, dated February 4, 1964. It is of interest only in that Wofsy stated that in his opinion the California loyalty oath, required of all University employees, amounted to very little to a Communist. He said:

> "As you may know, I turned down an associate professorship at the State University of New York because of objections to the Feinberg Law, New York's version of the 'loyalty oath.' Although I disagree with such 'oaths' as a criterion for academic appointment, the California oath is far less objectionable to me. I signed it in 1961 when I came to La Jolla and accept the fact that it is one of the requirements for working in the California system.
>
> The California Oath presents me with no problems of principle or conscience, but any system with such a provision does confront me with certain risks and some insecurity. I was for a very considerable period *in my youth* (our italics) publicly identified with and very active in radical organizations, and was personally before the *House Un-American Committee* (our italics) and the McCarran Subversive Activities Control Board in 1954 . . ."

It is evident that Dr. Wofsy conveyed the impression that he had engaged in radical activities only as a youth,

[29] Conference between Dr. Kerr and Chancellor Strong, May 30, 1964.
[30] Notes of Conference, Kerr and Strong, op. cit.

and that his appearance before the House Committee on Un-American Activities was accompanied by no especially significant occurrences. He neglected to state that he was national director for the youth section of the Communist Party for several years, and that what he referred to as his "youth" lasted until he was thirty-five years of age. He also used the Communist derogatory term for the House Committee on Un-American Activities by calling it the "Un-American Committee."

The notes of former Chancellor Strong regarding his conference with President Kerr on May 30, 1964, state that Wofsy ". . . apparently did not invoke the fifth amendment when brought before the HUAC and the McCarran Board in 1954." And on June 1, 1964, Kerr stated during a telephone call to former Vice Chancellor Alex Sherriffs that "Wofsy had not taken the fifth amendment and had been frank (at least to a point) about his past activities—the point being that Katz had not been frank, and agreed with Sherriffs that it was an impossible situation." [31]

It turned out, however, that Wofsy *had* invoked the Fifth Amendment during his appearance before the House Committee on Un-American Activities. And he invoked it fifty-three times.[32]

Former Chancellor Strong had already approved Wofsy's application for appointment to the Berkeley faculty, but when he discovered that Wofsy had tried to create the impression that his "radical" activities were limited to the period of his youth; that he had made no reference to the fact that he had repeatedly invoked the Fifth Amendment before the House Committee; that he had neglected to expand on his actual role as national director of the Communist Party youth section; and that a Communist document indicated that Wofsy's activities *had* continued after 1956—he sent a note to Kerr by messenger stating that he therewith withdrew his signature from the approval.[33]

This presented a sticky situation. Academic circles had urged Wofsy's appointment; his colleagues had attested

[31] Notes of telephone conference, Kerr and Sherriffs, June 1, 1964.

[32] Transcript of Testimony, "Investigation of Communist Activities, New York" Part II (Youth Organizations), March 16, 1955, pages 219–229.

[33] Letter, Strong to Kerr, June 8, 1964.

to his academic proficiency; he had been one of the most highly-placed and important Communists in the United States, and instead of having been interviewed by a security officer trained in such matters, he was examined by a philosopher and a scientist—eminent in their fields, but utterly naive in security matters. And, for reasons that we have already discussed, the University had been without any real security officer ever since Kerr became President and took Mr. Wadman from general security matters and shifted him to handling insurance.

Strong's letter to Kerr came just seven days after the appointment had been approved, and said, in part:

> "Now that we have from published documents a fuller account of Dr. Leon Wofsy, I withdraw my signature from the form submitted requesting his appointment as Associate Professor of Bacteriology. . . . He invoked the First and Fifth Amendments when questioned by a Congressional committee about Communist Party activities, but he makes no mention of this in his letter to Dean Elberg. The letter is also secretive in stating that his participation in left-wing activities took place in his youth. Until age 35 at least he was in a national leadership role in Communist Party activities." [34]

On June 25 at 10 a.m. Strong received a telephone call from Roger Stanier, who had learned of the impending interview. Stanier stated he thought Strong would be entirely satisfed with Wofsy, who had not engaged in any Communist activities since 1956. Strong's notes of this conversation read:

> ". . . he asked what questions I would ask . . . if I wanted a recantation from Wofsy with respect to his past activities. . . . Stanier said that Wofsy, if called before the HUAC again, would probably again refuse to answer questions about Party membership and activities. I remarked that the Chancellor was not a Congressional committee. I stood with the AAUP (American Association of University Professors) in its 1956 policy that questions could properly be asked and an individual could be expected to respond when record of past activities gave rise

[34] Letter, Strong to Kerr, op. cit.

to questions about the fitness of the individual to be appointed to a faculty position. Roger took no exception to this statement of position. . . ." [35]

Strong and Dean William Fretter interviewed Wofsy and submitted separate resumés thereof to President Kerr. They reported that Wofsy had been cooperative, discussed the family background that he felt had pointed him in the direction of Communism, and talked freely about his background in the Party. This, it will be observed, is not in accord with his statement to the *San Francisco Chronicle* of June 20, 1965, wherein he said he disdained to discuss such matters. Strong had a document that shook Wofsy's aplomb, however. It was a copy of the *Daily Worker* for June 6, 1956. This paper was and still is the official organ for the Communist Party of the U.S. The article was about the second national meeting of the Labor Youth League, headed and organized by Wofsy in his capacity as Youth Director of the Communist movement. It stated flatly that he had *not* left the Party in 1956, but rather was given a leave of absence for the purpose of doing other work "in the people's movement." The article reads as follows:

"The National Council of the Labor Youth League issued the following statement at the conclusion of its meeting recently in New York:

'The main order of business dealt with the needs of youth and the coming elections. A program of activity was discussed to help every League club across the country play an influential role among the young people in the communities and campuses.

'A document entitled The Needs of Youth and the Challenge of Peace was issued for discussion in and around the League. Based on these discussions, this program to meet the needs of youth will be edited and published sometime this summer for wide distribution among all those concerned with the problems of Young America.

'After seven years of outstanding leadership, Leon Wofsy, national chairman of our organization, was granted a leave of absence pending the next national convention. The gratitude and affection of the entire

[35] Memo of telephone conference between former Chancellor Strong and Dr. Roger Y. Stanier, June 15, 1964, 10 a.m.

League was expressed to him as he left to take on other responsibilities in the people's movement.' ''

We make no assertion that Wofsy was not telling the truth when he informed the two distinguished faculty members at Berkeley that he left the Communist movement in 1956. We only indicate that it does not agree with the official account of the proceedings of the national Communist youth organization of which he was the head, as printed in the official newspaper for the Communist Party of the United States.

An inspection of the resumés submitted by Chancellor Strong and Dean Fretter show that they were impressed by the fact that Wofsy was "cooperative and frank." Each of them stressed this point, and each of them stated that Wofsy explained that his father had been a radical Socialist, that he was raised in a family of Marxists, and that it was almost inevitable that his thinking be oriented toward Communism. He was, in short, literally steeped in Communism from the time he was a child until he was a mature man of 35—at least. Both Strong and Fretter agreed that when Wofsy was shown the *Daily Worker* article he exhibited surprise and concern for the first time, and was also rather resentful about being confronted with this new bit of evidence. Both men appeared impressed by the fact that Wofsy's father had been a radical Socialist, and that Wofsy had been frank and cooperative. Strong changed his mind once again, and recommended the appointment.

It appears that the elder Wofsy was something more than just a radical Socialist. He was one of the charter members of the Communist Party in this country, and his death was the occasion for a eulogy in *Political Affairs,* the theoretical organ of the Party. He was widely known in Communist circles for his work in the Party in Connecticut.[36]

During the interview with Strong and Fretter on June 26, 1964, Wofsy frankly told them that he was still radical in his views, but had no intention of reaffiliating with the Communist Party. He also remarked that he was related to Eli Katz through marriage. With regard to the California loyalty oath, he said he could sign it without fear

[36] *Political Affairs,* November, 1964, pp. 62–63; *National Guardian,* October 23, 1965, p. 11.

of being prosecuted for perjury even if he had been a member of the Communist Party at the time. He regarded the New York oath as much tougher, because it called for an annual review.[37]

Referring back to the Kerr critique, page 20, he there stated that "Professor Wofsy has signed the Levering Oath, and has publicly stated that he is no longer a member of the Communist Party." Kerr also declared that we presented no evidence that Wofsy had continued his Communist work after 1956. The record, however, discloses that Kerr had knowledge that official Communist Publications had stated that Wofsy was still active after 1956, and that Kerr was in error when he said Wofsy had not invoked the Fifth Amendment before the House Committee.

In his statement to the press Wofsy declared that he never discussed his Communist activities in connection with his application for employment at Berkeley. But he surely must have remembered that when he came to Berkeley from San Diego for the express purpose of conferring with Dean Fretter and Chancellor Strong, he did respond to such questions concerning his Communist activities, and at considerable length. Indeed, it was his apparent frankness and cooperation which prompted his questioners to recommend that his appointment be approved.

We repeat what we said in our 1965 Report: that, although Wofsy spent all of his life in the Communist Party after leaving high school and rose to a position of great importance as director of its national youth activities, he may well have left the Party in 1956. The official Communist paper said he did not leave it in any real sense and it was reporting a meeting of the youth organization he headed. We believe that it would have been of great assistance both to Chancellor Strong and to Dean Fretter and the University if they had been able to consult an expert on security and subversion—someone who had special training and experience in that field. Such a person would have known the significance of the various documents available and would have been able to handle a matter within his special field.

[37] Summary of Interview with Wofsy by Strong and Fretter, June 26, 1964.

An examination by men who have had no experience whatever in such matters, about which they are called upon to make a vital determination, is no effective examination at all.

Douglas Wachter

Since our 1965 Report was released, there has been another addition to the Bacteriology Department at Berkeley. (See previous discussion of Leon Wofsy of that department.) He is Douglas Wachter, formerly connected with SLATE, member of an old Communist family and a delegate from Berkeley to the Seventeenth National Convention of the Communist Party of the United States in 1959. He participated most actively in the convention sessions on recruiting and indoctrination of youth.[38]

The Element of Time

The Analysis quotes several lines from the Report, page 53, making a supposedly unimportant deletion marked by the customary series of dots. Here, again, the ingenious use of the "half-truth and distortion" technique which President Kerr decries is in evidence. From the sentence, "We have seen how the Communist Party *originally established its headquarters on the Pacific Coast in San Francisco, developed its indoctrination and educational system in that city,* established its faculty and student units at the Berkeley campus," etc., President Kerr has deleted the italicized portion. By deleting "originally," he creates a straw man he can attack. Now he can say: "This language implies the present existence of Communist faculty units at Berkeley." Note, however, that "this language" is *his* language, not ours. We carefully placed the time some years back; he carefully concealed that fact. He beats the straw man again by stating: "No . . . evidence of the continued existence of this unit is offered," neglecting to note that our Report recognized current opportunistic tactics by Communists and Communist sympathizers but made no assertion of the existence of a "Communist unit" on the campus today.

[38] *Political Affairs,* March, 1960, p. 73; see also, 1961 Report, pp. 24, 28–32, 78.

"Guilt by Juxtaposition"

We finally come to the last section of the "Analysis," except for appendices. The caption, "Guilt by Juxtaposition," is intended to warn the reader that the Report has erroneously coupled unrelated matters, though President Kerr cautions: "The technique is not quite the same as 'guilt by association' because there is often no direct claim of association with any specific individuals."

Aside from a few minor inaccuracies of quotation and page citation in the Analysis, there is little to say of the four numbered items in this section. Inevitably, in a relatively brief account of widely ramifying activities involving Communist and Communist-related groups and individuals, some people, places, and events will be mentioned alongside others with which they have little connection. President Kerr acknowledges that often no claim of association is made in the Report, but he finds the juxtaposition objectionable because of the association he reads into it. Since there is almost no limit to the pairing one may make in this fashion, our advice to readers, Dr. Kerr included, is to weigh carefully each item of information presented and determine how much it adds to others nearby. We must count on the reader's intelligence to keep him from drawing any unwarranted conclusions from mere juxtaposition.

We here conclude our replies to Dr. Kerr's allegations of error in our 1965 Report. Twenty-three pages of his widely-publicized critique were actually devoted to allegations of errors, many of which he characterized as errors that were more technical than substantive, and which we have deemed unimportant to quibble over here. The rest of his document was devoted to appendices, and we have also dealt with them insofar as they related to specific points in his criticism. The substantive allegations of error have also been treated in detail. We leave it to the reader to judge the validity of the Kerr critique.

DEVELOPMENTS SINCE JULY, 1965

Professor John Searle

On September 16, 1965, Vice Chancellor Earl F. Cheit announced the appointment of Dr. John R. Searle as the administration's Special Assistant on Student Organizations, and stated that his primary function would be to consult with student groups on the campus concerning the new rules for student conduct.[39] Searle had been generally recognized on the campus and throughout the community at large as a pro-FSM professor, but it remained for Calvin Trilling of *The New Yorker* magazine to phrase it succinctly. He stated that Searle is "the faculty member closest to the FSM."[40]

One instance of Dr. Searle's sympathetic attitude toward FSM activists is provided in a *Daily Californian* article on October 22, 1965. Barbara Garson stated that she had not been paid for three weeks' work she had done for the University because she refused to sign the Levering Act loyalty oath. When she did sign under protest, she remarked that Dr. Searle and Vice Chancellor Cheit had advised her to sue the University. At this point Searle promised to contribute to an organization started by Mrs. Garson and others to end the mandatory loyalty oath requirement, and called The End the Oath Defense Fund, 2411 Grove Street, Berkeley. Cheit later denied that he said Mrs. Garson should sue; he stated he told her she could sue, and that the action was up to her.[41] Pursuing the matter further, Mrs. Garson declared, referring to Chancellor Heyns, Cheit and Searle, "I got them their jobs. What are they going to do about getting me my job back?"[42]

Shortly after this occurrence, Chancellor Heyns announced the formation of a Student Rules Committee, stating that it was along lines proposed by Dr. Searle.

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[39] *Daily Californian,* September 16, 1965.

[40] Calvin Trilling, reprint from *The New Yorker,* in *Revolution at Berkeley,* Del Publishing Co., New York, September, 1965.

[41] *Daily Californian,* October 25, 1965.

[42] *Daily Californian,* op. cit.

The composition of that committee, and the manner in which it was staffed will be dealt with more fully in our 1967 Report. It is sufficient to note here that one of the seats was won by Bettina Aptheker, an admitted Communist, and that all but one of the other positions open to students were won by members of SLATE and pro-FSM graduate students.[43] Vice Chancellor Earl F. Cheit was appointed by Heyns to represent the administration.

To cast some additional light on Searle's attitude toward the student leaders with whom he would be dealing on behalf of the Chancellor, we quote from an item that appeared in the October 21, 1965, issue of *Tocsin:* "John R. Searle, the new special assistant to the Berkeley campus Chancellor on student organizations, showed up at the reception held at the Lima (Albert J. 'Mickie' Lima) residence, 6115 Dover Street, Oakland, on September 18." The reception was given in honor of Bettina Aptheker and Jack Kurzweil, recently married. Donations were collected at this affair, and the proceeds turned over to the *People's World* and the Free Speech Defense Fund.

Lima is well known throughout the Bay Area as Chairman of the Northern Division of the Communist Party of California, and was frequently seen on the Berkeley campus during the FSM demonstrations. The *People's World* is, as we have stated, the Communist Party newspaper.

At a rally on the steps of Sproul Hall celebrating the anniversary of the sit-in on December 2, 1964, Searle is mentioned as one of the speakers, and is quoted as saying, in relation to the demonstrations of the Free Speech Movement: "I think we have succeeded in this revolution." [44]

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[43] *Daily Californian,* November 19, 1965.
[44] *San Francisco Chronicle,* December 3, 1965.

THE VIETNAM DAY COMMITTEE

During the latter part of June and early July, 1965, almost 800 defendants were found guilty in Judge Rupert Crittenden's Berkeley Municipal Court and sentenced for unlawfully invading the administration building on the Berkeley campus at the height of the rebellion. The close of this long and arduous trial also marked the decline of the Free Speech Movement. It had achieved virtually all of its objectives and was now concerned with solidifying its position and entrenching its supporters in positions of strategic importance.

Bettina Aptheker demolished the view taken by many FSM sympathizers that Communists had nothing to do with directing the movement when she declared that she had been a secret member of the Communist Party throughout the entire Berkeley Rebellion and for several years prior thereto. The statement came as no great surprise to those who had followed her career, her associates and her activities and who knew her family background. However, it did provoke some rather curious reactions in the liberal press and from apologists for the FSM.

It is customary with radical organizations to scuttle themselves when they have served their purpose and to salvage the hulls by forming continuations committees or groups which can be activated should occasion demand. So it was with the FSM. Instead of a Free Speech Movement, there emerged a Free Student Union—with many of the same leaders and with much the same membership and supporters. The FSU was more loosely structured and soon found that, as an indirect result of the passions and enthusiasms of the rebellion, many diverse cliques and factions had sprung up. The Free Student Union, concerned with entrenching itself and resisting all efforts to modify its achievements, was beset from its inception with petty wrangling. It soon began to languish. It had inherited much of the equipment left over from the campus demonstrations—walkie-talkie sets, public address systems and some mobile units. But it had nothing to do

except to protect itself against dislodgment and to seek more influence in the actual operation of the University. In other words, there were no great issues around which the FSU could rally a following.

The University's public relations department took advantage of the apparent lull to proclaim that the trouble was over and that rules were now being observed by the students. This was an honest statement, because the FSM had badgered the administration into rescinding all the rules it found distasteful. Those that remained were ignored in most cases.

By the fall of 1965 the FSU had resolved most of its internal difficulties and started a membership drive, which fell short of expectations. It established three categories of "locals": there was a "general local," which considered issues brought up by individual members; a "time local," the members of which met regularly at a fixed time each week and constituted themselves into a sort of continuations committee to keep the organization informed of campus conditions and issues; and an "interest local," which was designed to concentrate on specific issues of reform or improvement on the campus. The interest local was vested with exclusive jurisdiction to call campus strikes, to raise legal and technical objections to University actions, and to handle civil rights and student affairs generally. No night meetings of any of the locals were contemplated, and the University provided facilities on the campus for FSU meetings at other times.

As it developed, there were few issues to determine and no activity to stimulate the members and keep alive their enthusiasm. Consequently, the FSU remained virtually dormant until the controversy over Vietnam provided a new rallying point. When demonstrations began, arrangements were made by the FSU to lend the Vietnam Day Committee some electronic equipment, and leaders of the old FSM and FSU now became active in the VDC.

Old Leaders—New Cause

The origin of the Vietnam Day Committee is obscure. Some claim that its inception was a "teach-in" conducted in March, 1965, by faculty members at the University of Michigan in Ann Arbor. This affair was reported in the press and described by the U. S. Senate Internal Security

Subcommittee.[45] Approximately 2,500 people attended this rally, which consisted of a series of "lectures, open meetings, and seminars punctuated by folksinging and bombscares." In commenting generally on the teach-ins, the Subcommittee said:

> "In reality, the great majority of these teach-ins (there were a few notable exceptions) have had absolutely nothing in common with the procedures of fair debate or the process of education. In practice they were a combination of an indoctrination session, a political protest demonstration, an endurance contest and a variety show. At most of the teach-ins the administration's point of view was given only token representation. The great majority of the speakers, by deliberate design, were critics of the administration. At many of the teach-ins, spokesmen for the administration's policy were subjected to booing and hissing and catcalling, so that it was impossible for them to make a coherent presentation of their case. Communist propaganda films were frequently shown. Communist literature was distributed. People of known Communist backgrounds were frequently involved."

The Senate Subcommittee found that a majority of those who were participating in the marches, teach-ins and other demonstrations were sincere and loyal dissenters. But it was also pointed out that the situation presented an admirable opportunity for Communists of all complexions to unite in a common front to further the world Party line—and that line was to give all possible aid to the Viet Cong, and to make all possible trouble in this country which would interfere with the war effort.

Liberal organizations such as SANE held themselves aloof from the Communists "and established certain criteria and certain controls to protect their organization against Communist infiltration." [46] Immediately, the Communists turned loose a propaganda attack against these groups in accord with their technique of "rule or ruin."

[45] "The Anti-Vietnam Agitation and the Teach-In Movement: The Problem of Communist Infiltration and Exploitation," Document No. 72, 89th Congress, 1st Session, October, 1965, 256 pp.

[46] Senate Internal Security Subcommittee, op. cit.

But, the Senate Subcommittee observed, there was no effort made by the leaders of the anti-Vietnam war movement in general to guard against such infiltration. On the contrary, demonstrations were being led by Communists in most places and members of the Party were cordially received by other leaders.

The next teach-in of note was held on the Berkeley campus on May 21 and 22, 1965. It attracted such prominent figures as Prof. Staughton Lynd from Yale, recently featured in the news for his unauthorized visit to Hanoi, an affair arranged by the ubiquitous Herbert Aptheker, Bettina's father. As the anti-Vietnam activities increased at Berkeley, the old supporters of the FSM assumed positions of control: Bettina Aptheker, Mike Myerson, Steve Weissman, Robert Scheer, Mort Scheer, Harold Supriano, Conn Hallinan and some of his brothers, Douglas Wachter, Jerry Rubin and Carl Bloice. There were others who had also been active in the FSM, but these are perhaps the best known. Some were students at the University, some were non-students who roamed the campus at will, agitating, exhorting, speaking, distributing literature, soliciting funds and otherwise using the state-owned facilities of the institution without hindrance.

By the summer of 1965 our investigations convinced us that control of the anti-Vietnam demonstrations in the Bay Area had been taken over by the Communists. The U. S. Senate Subcommittee came to the same conclusion regarding the national movement. It said:

> "The control of the anti-Vietnamese movement has clearly passed from the hands of the moderate elements who may have controlled it at one time, into the hands of the Communists and extreme elements who are openly sympathetic to the Viet Cong and openly hostile to the United States, and who call for massive civil disobedience, including the burning of draft cards and the stopping of troop trains. This is particularly true of the national Vietnam protest movement scheduled for October 15–16." [47]

It is not necessary to indicate that these demonstrations against our war effort were an immense aid and comfort to our enemy. From Moscow and Peking, and from Hanoi and Havana, came streams of propaganda and congratula-

[47] Id., p. xv.

tions for the efforts being made by American radicals against our own military forces, and in assisting the Viet Cong to defeat us. We have reproduced some of this anti-American material and wish to call special attention to the statements of the International Union of Students, which sent its greetings and gratitude to the American organizations. It will be recalled that the IUS is one of the two huge world Communist youth organizations, with headquarters in Czechoslovakia. (See Exhibit II, p. 80.)

Some of the propaganda for the May teach-in at Berkeley was prepared by Mike Myerson, former chairman of SLATE on the Berkeley campus, delegate to the Eighth World Communist Youth Festival in Helsinki and one of the founders of the DuBois Clubs of America—the new Communist Party youth adjunct. Myerson went to Hanoi in September, 1965, was made an "honorary nephew" of Communist leader Ho Chi Minh, and has since participated in demonstrations wearing a Viet Cong cap and displaying a ring he says was made from the wreckage of an American plane. Accompanying him on this un-authorized trip into the heart of the enemy country were Harold Supriano, formerly employed as a parole officer by the California Youth Authority and also a founder of the DuBois Clubs; Christopher Koch of New York, and Richard Ward of Paris.[48]

Professor Stephen Smale, of the Berkeley campus Mathematics Department, and Jerry Rubin, a non-student, take credit for having started the Vietnam Day Committee and anti-Vietnam demonstrations throughout the country. Smale was a student at the University of Michigan and is alleged to have been a member of the Labor Youth League there.[49] This was the youth section of the American Communist Party, then directed by Leon Wofsy, who is now with the Department of Bacteriology at Berkeley. Smale was also connected with the radical Young Progressives of America, and with the Arts, Sciences and Professions Council, a Communist cultural front. While a member of the faculty at Berkeley, he has acted as an advisor for the Fair Play for Cuba Committee. Jerry Rubin was the sparkplug for this front. The latter made several visits to Cuba and took no pains to conceal his Communist sympathies.

[48] *San Francisco Chronicle,* September 29, 1965.
[49] *National Review,* December 14, 1965, pp. 1157–1159.

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news service

International Union of Students

SOLIDARITY WITH VIETNAMESE PEOPLE AND STUDENTS

Resolution of IPC 9th world festival of youth and students

IUS Appeal on occasion of week of solidarity with Cuba and Latin America

Students killed in Ecuador and Greece

University federation to fight ROK-Japan treaty

Statement of IUS Secretaric (A forgery exposed)

reat cause of defending the North, libe ating the South and achieving the peace- il reunification of their motherland.

Your struggle is perfectly just. As the .S. imperialists have perpetrated brutal ggression against South Vietnam, the orth Vietnamese have every right to upport their compatriots in the south," he letter states.

The patriotic, anti-U.S. struggle of the ietnamese people is an important com- onent of the struggle of the people of he world against U.S. imperialism. It is f great international significance. Your truggle is not only in the interest of our freedom and independence, it is lso an inspiration for other nations in heir struggle for freedom and indepen- ence. The people and students of the vorld should not only support you, but hould also express thanks to you for he great contributions you have been naking to the defence of Asian and vorld peace at the cost of your blood nd lives.

We will for ever support you in carry- ng through the great patriotic anti-U.S. truggle to the very end. We are of the pinion that the United States must trictly abide by the Geneva Agreements f 1954, and the peace, independence, so- ereignty, unification and territorial in- egrity of Vietnam must be recognized in trict accordance with the Agreements, hat all U.S. armed forces must be with- lrawn from South Vietnam, and all U.S. var actions against North Vietnam must e stopped, that the affairs of South Vietnam must be left to the South Vietnamese people to settle and the re- unification of Vietnam must be settled y the Vietnamese people themselves.

We hold that only by compelling the Jnited States to withdraw all its armed orces from South Vietnam can the ne- essary conditions be created for the po- itical settlement of Vietnam. We join the Vietnamese people and students in firmly pposing any 'peaceful negotiations' in- rigue played by U.S. imperialism and its ollowers. We are ready to render you ll necessary assistance, including weap- ons. We will, in case of necessity, send volunteers to South Vietnam to fight shoulder to shoulder with our South Viet- namese brothers and sisters to drive out he U.S. aggressors to the last man. We are deeply convinced that final victory will certainly go to the great heroic Vietnamese people."

Letter to UELSV

In its letter to the Union of Students for the Liberation of South Vietnam (UELSV), the Secretariat of the IUS, conveyed "its warm and militant greetings... to all the valiant South Vietnamese students who are now taking arms in hand in order to drive the U.S. aggressors out of their homeland."

It said that the signing of the Geneva Agreements eleven years ago was made possible only after the Vietnamese people had inflicted a crushing defeat on French colonialism in the glorious Dien-Bien-Phu battle. But without waiting for the signatures to dry, the U.S. imperialists stepped into shoes abandoned by the old colonial rulers and made themselves the new overlords in order to perpetuate the division of Vietnam, to make South Vietnam their new colony and one of their military bases. They spare no effort to sabotage the Geneva Agreements on Vietnam; they have introduced modern armaments of mass destruction, short of atomic weapons, and launched "special" war against the South Vietnamese people.

Recently, in view of the successive defeats suffered by them and their puppets, the U.S. imperialists have thrown in more combat troops in South Vietnam, dragging along their satellite countries, like South Korea, Australia, the Philippines, New Zealand, etc. in order to participate in the "operation" against the liberation fighters.

The South Vietnam bloody military dictatorial regime, whose existence is only possible due to the backing of U.S. bayonets, has created a reign of terror in South Vietnam by imposing a state of war, closing down schools and forcing youth and students to enlist in the army to serve as cannon fodder for the U.S. aggressors, shooting students and young patriots, etc. Student martyrs like Le Hong Tu, Le Quang Vinh, Le Van Xhuyen and many others who gave their lives before the firing squads for the liberation of their country, as well as the girl student Quaoh Thi Trang who fell victim in a huge demonstration against fascist tyranny, will always be remembered by

their people and the progressive students all over the world, the letter notes.

Referring to the bombing raids on the territory of the Democratic Republic, the letter declares: "These raids cannot but arouse utmost indignation and the burning hatred of the entire Vietnamese people for the common enemy, which barbarously bombed hospitals, schools, market places, industrial centres and living quarters, inflicting casualties among peaceful civilians.

"But no modern weapons or barbarism can make the heroic Vietnamese people surrender, for they are fighting for a just cause. On the contrary, such barbarism serves only as another proof for all to see what the real nature of imperialism is." The heroic Vietnamese people can never be threatened nor defeated by any kind of modern weapons of U.S. imperialism, still less can they be defrauded by political intrigues.

The IUS reaffirms its unconditional support for this just and heroic struggle. It will continue to render all necessary moral and material assistance, including the raising of funds for the purchase of weapons, and to send volunteers if the situation necessitates so in order to fight shoulder to shoulder with the South Vietnamese people and students to drive U.S. imperialism out of South Vietnam. "We are deeply convinced that the struggle of the heroic South Vietnamese people will be crowned with final victory. South Vietnam will surely be liberated and Vietnam will be reunified," the letter concludes.

• • •

A Letter of Thanks

The Union of Students for the Liberation of South Vietnam sent the following letter to the IUS, which was also published by the "Liberation Press" agency, the organ of the National Liberation Front of South Vietnam:

"We are very happy to convey to you our cordial appreciation of your sympathy and support for the resolute stand of the South Vietnamese people, as expressed in the Five-Point Declaration of the South Vietnam National Liberation Front on March 22, 1965.

"At a time when American imperialists on the one hand are frantically intensifying their aggressive war in South Vietnam disembarking tens of thousands of American and vassal soldiers and spreading the war to North Vietnam and, on the other hand, resorting to 'peace negotiations' blackmail in order to dupe world opinion, your sympathy and your support to our resolute struggle are perfect illustrations of the international solidarity and close friendship with the South Vietnamese people on the part of those valuing independence, freedom, peace and justice in the world. It is also a firm encouragement to our just patriotic struggle.

"The students and people of South Vietnam, enthusiastic and prond to have companions in struggle throughout the world who support them firmly, morally and materially, reaffirm their determination to defeat the American imperialists and their lackeys and re-establish independence, democracy, peace and neutrality in South Vietnam, which is marching towards the peaceful reunification of our country.

"Once again, we sincerely thank you and wish you great success in all your activities."

IUS WRITES TO AMERICAN PROGRESSIVE ORGANIZATIONS

In connection with the anniversary, the International Union of Students has addressed a letter to a number of American progressive organizations, including Youth Against War and Fascism, May Second Committee, W. E. Dubois Clubs of America, Student Non-Violent Co-ordinating Committee, Student Peace Union, Students for a Democratic Society, Universities Committee on the Problems of War and Peace. Advance Youth Organizations Berkeley Campus of University of California, Progressive Youth Organizing Committee, Young People's Socialist League and Women Strike for Peace. The letter follows:

Dear friends,

On the occasion of the anniversary of the signing of the Geneva Agreements on Vietnam, the International Union of Students takes this opportunity to extend its greetings to the students of the United States who are engaged in the fight

inst the U.S. administration's aggres-
e actions in Vietnam.

e latest developments in Vietnam can-
leave anyone in the world to whom
ideals of independence, peace and
tice are dear, undisturbed or indif-
ent.

ause of American military interven-
n, bloodshed has been going on in this
t of Indochina for many years. The
tnamese people, who at the cost of
vy sacrifices liberated themselves
m the French colonial yoke, have had
assert their right to independence,
complete true liberty once again in
ir severe and heroic history.

is their fight cannot help but win the
port and sympathy of all progressive,
nocratic-minded people on earth.

u are well aware that at present mil-
ns of voices are being raised all over
world against the American admini-
ation's policy in Vietnam, denouncing
false pretexts of this gigantic mas-
re.

the course of recent months the si-
tion in Vietnam has been even more
gravated. In addition to the intensifi-
ion of military aggression in the
th, the US army has been carrying
t furious air raids on the Democratic
public of Vietnam. Every day, merci-
s bombardment is going on, destroying
t only communications, bridges and
ds, but also industrial centres, peace-
villages, hospitals and schools, caus-
heavy losses and mass destruction.

this was recently witnessed by our
ion's delegation which visited Vietnam
nonth ago and which saw the bombar-
d areas of the country.

using their inevitable defeat, the Ame-
an aggressive forces are dangerously
scalating" the war in Vietnam.

en now they are planning to increase
e total number of American armed for-
s in South Vietnam to over 100,000.
e U.S. military command in Vietnam
s full freedom to wage its aggressive
s as it sees fit.

e American troops are resorting to
ch criminal measures as the use of
isonous chemicals. Just recently the
ployment of these chemicals caused
e poisoning of over 30,000 people in
e province of Travinh, as well as the
destruction of 30,000 hectares of crops. At the same time fierce bombardment of the northern areas of the country is being intensified.

Where, then is the conformity between the appeals of President Johnson for "negotiations without conditions" and the obvious fact of increased aggression in Vietnam?

In many parts of the planet people are undertaking concrete actions to express their solidarity with the Vietnamese people in protest against the adventurist policy of the Pentagon and militarist circles in the U.S.A., demanding the immediate halting of U.S. aggression in Vietnam.

From country to country this solidarity is taking different forms: mass demonstrations, cables of protest to the US administration, the collection of funds and medicaments, etc. In many countries a volunteer movement has already started among the youth and students. Thousands of medical students have expressed their desire to go to help their brothers in Vietnam. Progressive trade-unions are preventing the delivery of military cargoes from their countries to the battlefields in Vietnam.

The peace-loving people of the world are firm in their intention to oblige the US government to respect the resolutions of the Geneva Conference, the anniversary of which we are now celebrating, and to stop that government's war in Vietnam which is costing many lives, not only Vietnamese, but also those of American young people.

We highly appreciate the activities of your organization in its solidarity campaign with Vietnam, as well as your practical contribution. We are well aware of the mass demonstrations that have taken place in the United States, as well as the various other forms of protest and solidarity, including the refusal to go to Vietnam to serve in the U.S. army and the many other important expressions of your attitude towards the present state of affairs in Vietnam.

But the Vietnamese and all other progressive people are expecting ever-increasing solidarity and more concrete actions on the part of Americans that will show even more that progressive-minded America does not approve of the aggres-

siveness and adventurism of its leaders. It is now becoming increasingly obvious to the majority of people on earth that the only aim of the South Vietnamese people is the possibility of working out their destiny without American interference.

This is obviously the sacred right of any people and the Vietnamese have every reason to fight for it.

The majority of progressive people throughout the world are supporting the just position of the South Vietnamese F.L.N., the only authentic representative of the people of South Vietnam, and of the government of the DRV as expressed in the well-known statements of March 22nd and April 8th of this year.

We appeal to you as representatives of the progressive American youth, and to your conscience and your human sentiment, to raise your voices against this dirty war in Vietnam, against the frenzied bombardment of the northern part of the country, against the crude violation of the sovereignty of the Vietnamese people.

The youth are most active in the present world and they feel their responsibility for the future of mankind.

We therefore express our strong hope that you will find every possible way to express your solidarity with your Vietnamese contemporaries and friends.

The IUS represents the great majority of students of Asia, Africa, Latin America and Europe who are fighting for national independence and world peace, against imperialism, colonialism, and neo-colonialism, for the democratic rights of students, for the democratization and reform of education and the betterment of students' study conditions. This international organization comprises about 80 national unions of students.

It therefore considers it its primary task to launch a world-wide mass campaign in support of the fight of the people of Vietnam. We sincerely hope that all conscientious American students will increase their activities in solidarity with the Vietnamese people and students, thus making their effective contribution to this international student movement. The IUS will be grateful to you for any information you can provide us concern your efforts in this respect.

Combining our efforts, we must stop U.S. government's military adventure Vietnam!

Zbyněk Vokrouhlický
President
International Union of Stude

RESOLUTION OF THE INTERNATIONAL PREPARATOR COMMITTEE OF THE 9TH WORL FESTIVAL OF YOUTH AND STUDENTS FOR SOLIDARITY, PEACE AND FRIENDSHIP

The IPC of the 9th World Festival Youth and Students, recently meeting Tampere, Finland, has adopted the fo lowing resolution:

On the decision of the Permanent Co mission, the International Preparato Committee of the 9th Festival of You and Students for Solidarity, Peace a Friendship met in Finland on July 9 a 10, 1965.

Noted with satisfaction was the gre interest all over the world among t youth and students, and the unpreceden ed scope of the preparations in 1 countries. Fruitful relations have be established with more than 1,200 organ zations. Particularly representative a active National Preparatory Committe have been set up in 78 countries. In vie of all this, the Festival is proving to the largest world demonstration of you and students for solidarity, peace a friendship.

The International Preparatory Committe appreciates the activity of the Permane Commission, which has extensively co tributed to achieving these results, an it fully approves the resolution adopte on June 25th.

Having taken note of the circumstanc that prompted the Commission to ca the present meeting, the Internation Preparatory Committee approves this d cision.

At a time when American aggression Vietnam and Santo Domingo imperil world peace and requires the intensific tion of the struggles of youth and stu dents against imperialism, colonialis

STATEMENT OF THE IUS SECRETARIAT

(A Forgery Exposed)

It has been brought to the attention of the Secretariat of the International Union of Students that a poster against the Peoples Republic of China with the slogan "Students of the World Condemn all Nuclear Adventurists" was sent out in the name of the International Union of Students to different parts of the world in various languages.

The Secretariat of the IUS wishes to declare that it has never published such a poster and strongly condemns this cowardly act of forgery. During the past two years, imperialist and reactionary forces in the student movement have been trying to discredit the International Union of Students through similar devices. First they forged a brochure, then a series of letters and lastly the poster in question. The Secretariat of the IUS strongly condemns these cowardly methods which only reflect imperialism's fear of the strength of the IUS and the latter's consistent policy in the interests of safeguarding world peace, against imperialism, colonialism and neo-colonialism and for student interests.

Secretariat of the IUS

Published by the International Union of Students, Vocelova 3, Prague 2, Czechoslovakia.

Professor Morris Hirsch, a colleague of Smale's in the Mathematics Department, was also a prime mover in the organization of the Vietnam Day Committee and took an active part in its demonstrations and teach-ins.

As the VDC gathered momentum it was easy to draw some sympathetic groups and front organizations into its orbit. These organizations included Students for a Democratic Society, DuBois Clubs of America, SLATE, Committee for Nonviolent Action, Free Student Union, Citizens Correspondence Committee, Women for Peace, Committee to Abolish the House Committee on Un-American Activities, Independent Socialist Club, San Francisco New School, San Francisco Mime Troupe and the Stanford Committee for Peace.

Teach-In at Berkeley, May, 1965

At the Berkeley campus on May 21–22, the teach-in was described by Professor Robert Scalapino, chairman of the Department of Political Science, as follows:

> "The May 21 meeting on the Berkeley campus is symbolic of the new anti-intellectualism that is gaining strength today.
>
> A few individuals, most of whom would not dream of treating their own disciplines in this cavalier fashion, have sponsored a rigged meeting in which various ideologues and entertainers are going to enlighten us on Vietnam.
>
> Only a handful of the performers have ever been to Vietnam or made any serious study of its problems. The objective is propaganda, not knowledge.
>
> To lend some respectability to the performance, the organizers sought to give us 'guerilla' status in the show.
>
> They urged us to appear, with ratios up to 8 to 1 against us, and with our opponents being such individuals as the editor of the *National Guardian,* the international secretary of the DuBois Clubs, the Mime Troupe and assorted jazz singers.
>
> Can we be blamed if we did not want to lend our names and reputations to that effort?
>
> This travesty should be repudiated by all true scholars irrespective of their views on Vietnam. It

can only damage the reputation of Berkeley as an institution of higher learning.'' [50]

In the plaza before Sproul Hall, scene of the massive student demonstration of December 2, 1964, there appeared booths and tables manned by representatives of the DuBois Clubs; the Progressive Labor Party, which follows the Red Chinese line; the Trotskyites, and other radical youth groups. There were pictures and cartoons portraying alleged American tortures and atrocities against the Viet Cong, as well as pictures of Karl Marx. Aid for the Viet Cong was solicited. There were folksingers, entertainment skits and continual peddling of Communist papers and literature. Members of the University faculty, like Professor Scalapino and the late Eugene Burdick, and the visiting Hans Morgenthau from the University of Chicago, refused to participate in this ideological circus. They were ridiculed as cowards. No one could seriously question the true liberalism of Professors Scalapino, Burdick and Morgenthau, but this was a mass protest demonstration, highly emotional and completely one-sided. It was seriously devoted to opposition to our Vietnam policy, but obviously not devoted to freedom of speech—which so recently had been the subject of equally emotion-fraught rallies at that location.

The control of this affair followed the familiar pattern. During the FSM demonstrations in 1964 there had been monitors who fanned through the crowd, keeping the fervor at high pitch and maintaining vigil over the proceedings. At this teach-in there were the customary monitors with their walkie-talkie equipment and authoritative armbands. It was amply demonstrated that this affair was part of a well-coordinated world propaganda operation when wires of congratulation were read from Communist elements in various parts of the world.[51]

The protest continued through the night of Friday, May 21. The Saturday affair was nothing but a mass meeting, laced with speeches of increasing intensity by leaders of various radical youth groups. Many of the faculty members at Berkeley who were opposed to our engagement in Vietnam were disgusted by the open, de-

[50] *San Francisco Chronicle,* May 21, 1965.

[51] See: *Zuricher Zeitung,* June 13, 1965, p. 7, quoted in U. S. Senate Subcommittee Report, op. cit., pp. 21–24.

fiant nature of the May demonstration and withdrew their support from the Vietnam Day Committee. This served to concentrate the anti-American leadership of the movement.

Disapproval of its spread through the community. While the Free Speech Movement had provoked enormous criticism of the University, it was nonetheless regarded by many as a local matter, largely confined to the Berkeley campus and pertaining to issues there. However, the anti-Vietnam demonstrations were concerned with a subject that was of national concern, and when it became evident that many of the FSM leaders were also heading the anti-Vietnam movement, there were expressions of outrage from public figures, from most of the press and even from moderate and conservative members of the academic community, who were getting more than enough of this sort of cheap emotionalism on their campuses.

The alleged supporters of freedom of speech demonstrated their utter hypocrisy by cheering speakers who agreed with their views and booing those who presumed to contradict them. The pattern was the same throughout this country and Canada: at Stanford, at the University of Oregon, at the University of Michigan, at the University of Wisconsin and many other places of higher learning. Wherever these demonstrations took place, there was enthusiasm for the anti-Vietnam speakers and insults for their opponents. When Dr. Robert Scalapino went to speak at the University of Toronto, where a talk by Mike Myerson about his unlawful visit to Hanoi had been cancelled, Scalapino was booed, his remarks were drowned out, and the students shouted that they wanted to hear Myerson. There were speakers to oppose the views of Dr. Scalapino, but Myerson emerged as the darling of the left.[52]

California was not the only state in which public indignation was aroused over the use of campus facilities in these propaganda affairs. On March 16, 1965, the Michigan State Senate passed a resolution condemning participation in the teach-in by 20 professors at the University, who had threatened to cancel their classes on March 24 so students might attend the teach-in. The resolution praised University President Harlan Hatcher in oppos-

[52] *San Francisco Examiner & Chronicle,* October 10, 1965.

ing such action and requested him to take appropriate disciplinary action.[53]

In Berkeley the May teach-in led to the formation of an ad hoc group to stage "Vietnam Day" protests, and the group congealed itself into a permanent and formal organization calling itself the *Vietnam Day Committee.* It attracted approximately 500 Berkeley students and a larger number of non-students. As the organization was perfected under the leadership of Professors Stephen Smale and Morris Hirsch and the non-student Jerry Rubin, the membership grew. Propaganda was ground out by the DuBois Clubs in the Bay Area, and the campus was covered with posters and written materials that were intended to pave the way for the next demonstration scheduled for October 15–16. The general program included national and international liaison with peace and youth groups, massive civil disobedience, and "extensive work in the community to develop off-campus grassroots opposition to benefit from the militancy of direct action." [54]

President Kerr defended this distribution of VDC material on the campus by contending that it was done as part of the "open forum, in the American tradition of a great university." [55] Rooms in university buildings were being used freely by pro-Viet Cong leaders, many of whom had no connection with the university, for the purpose of formulating plans for blocking the movement of U. S. Troop trains and staging demonstrations at the Oakland Army Terminal. One result of this unhampered use of state facilities was a pre-conditioning of the students for activities scheduled for October.

The Regents had insisted that the campus should not be used for planning off-campus illegal activities. This position had been repeatedly announced and stressed by both the Regents and the University administration. During his Charter Day address at the Davis campus on May 5, 1964, President Kerr declared: "Just as the University cannot and should not follow the student into . . . his activities as a citizen off the campus, so also the students, individually or collectively, should not and cannot take the name of the University with them as they

[53] Michigan State Senate Resolution No. 71, March 16, 1965.
[54] *California Alumni Monthly,* December, 1965, p. 38.
[55] *Oakland Tribune,* September 30, 1965.

move into religious or political or other non-University activities; *nor should they or can they use University facilities in connection with such affairs.*" (Our italics.)

Conditions at the Berkeley campus rendered it peculiarly susceptible to the FSM revolt. And the success of that uprising rendered the campus admirably suited for all manner of political radicalism, even for the Vietnam Day Committee's planning of off-campus illegal activities. As the Alumni magazine put it:

> "The VDC office at Berkeley was the international headquarters for the October 15–16 demonstrations that took place throughout the world." [56]

As a matter of fact, the October protest was advertised by the VDC as "International Days of Protest." [57]

Headquarters for the VDC was originally at 2502 Telegraph Avenue, Berkeley, then moved to 2407 Fulton Street; but the recruiting, propaganda and organizing functions were conducted on the University campus. During the period between the May teach-in and the October demonstrations, there were attempts to stop U. S. troop trains in and near Berkeley and threats of "civil disobedience," which, of course, is another term for illegal activity. (See Exhibit IV, p. 94.) VDC preparations along these lines led to a proposal that one of the University buildings, Eshleman Hall, be pledged as a guarantee of bail for demonstrators whom the VDC expected to be arrested. The Associated Students own an equitable interest in the building, but the land is the property of the Regents, who were not expected to take kindly to this brash proposal. Neither did officials of the Associated Students, and this effort to provide bail security for potential criminals was dropped.

Leaders of the VDC recognized the growing hostility to their plans throughout the community and then announced they had decided against massive civil disobedience in October. Having made this concession, they requested Chancellor Heyns to dismiss classes on October 15 "with a substitution of classes prepared by the VDC . . . " Understandably, Chancellor Heyns denied the

[56] *California Alumni Monthly,* December, 1965, p. 38.

[57] See: *The International Protest Movement Against American Intervention in the War in Vietnam,* Report by The International Secretariat of the National Committee to End the War in Vietnam, p. i. (Also See Exhibit III, p. 91.)

THE INTERNATIONAL PROTEST MOVEMENT AGAINST AMERICAN INTERVENTION IN THE WAR IN VIETNAM

A Report Prepared by

The International Secretariat
of the National Committee to
End the War in Vietnam
Suzanne Pollard, Chairman

Vietnam Day Committee
Berkeley, California
U.S.A.

CHINA

"The world press agrees that the mid-October demonstrations against the U.S. war in Vietnam by U.S. student and peace organizations, through a national co-ordinating committee, were 'unprecedented in scale and vigor' and 'clear-cut' in aim. More than 100,000 people came out in over 80 cities, sometimes against police and tear-gas. They avoided entanglement in details of 'negotiation' but carried slogans like: 'Stop the Imperialist War' and 'U.S. Get Out of Vietnam!' European papers reported Washington 'embarrassed and shaken'; demonstrations spread also to a dozen foreign cities.

"This is no longer a 'loyal opposition' or a 'polite protest'; this is Resistance to an Unjust War! Most members still seek tactics within the law; even a 'ban-the-draft movement' hopes to stop the draft by mass 'conscientious objection'. Some individuals however already tear up draft-cards, risking penalty of five years jail.

"To both I say: 'No action is so legal that the Beast on the Potomac' cannot make it illegal if you challenge its will; and no action is so illegal that it cannot be made legal by a people in power. Tactics and law are important but it is more important to see clearly the nature of the enemy.

"'You are tapping the forces that in 1776 made the American nation and still free nations overthrow dynasties. Thus far, in your hundreds of thousands among America's millions you have barely touched these forces. But among the three billion people on our planet all those who fight against aggression hail you and trust you to keep on.'"

"U.S. Demonstrations Unprecedented in Scale," Letter from China, Anna Louise Strong, no. 32, Peking.

SOUTH VIETNAM

The following is an open letter to the American people, written by Dr. Phung Van'Cung, Chairman of the South Vietnam Peace Committee (an organization affiliated with the National Liberation Front of South Vietnam), October 12, 1965, on the occasion of the International Days of Protest.

"By mid-October this year, the U.S. Government had dispatched to South Vietnam 142,000 Americans whose task is to destroy and kill, irrespective of age, sex or religion. 20 years after World War Two, the South Vietnamese people thus continue to suffer enormously. 170,000 persons have been killed, 800,000 maimed, and 400,000 imprisoned. Most up-to-date U.S. armed units, with B-52 strategic aircraft, noxious chemicals and poison gas, are daily massacring people in all parts of South Vietnam and devastating their fields and gardens. Massacres many times more horrible than Oradour and Lidice have occurred again and again during raids by U.S. troops. Hundreds of graves have taken the place of peaceful homes in Chau Son, Cam Le, Vinh Quang, Boi Loi, Ben Cat, and other areas. So many mothers and wives have lost their children or husbands. Thousands of

INTERNATIONAL ORGANIZATIONS

by Earl D. Wyde

Though protest against the Vietnam War has been waged extensively at a local level by the many groups mentioned above, several established international organizations with affiliated groups in many countries have also communicated their concern with this issue to the Vietnam Day Committee.

The International Institute for Peace, with collaborating peace committees in over 80 countries on every continent, sent its support for the International Days of Protest. This group also helped to initiate the Helsinki Congress for Peace, National Independence and General Disarmament which was held in Finland during July of this year. The Congress adopted a resolution calling for a world-wide union of peace organizations to help sustain the people of Vietnam in their "just struggle against the war of aggression by the United States, for their national independence and the unity of their country."

The Bureau International de la Paix at a September conference held at Jongny-sur-Vevy, Switzerland, drafted a statement demanding that the bombings of Vietnamese territory be ceased and that the United States and the National Liberation Front express their willingness to negotiate with each other.

The International Call for protests on October 15th and 16th was carried in a special newsletter of the War Resistors' International that was distributed to more than 200 of their news release contacts.

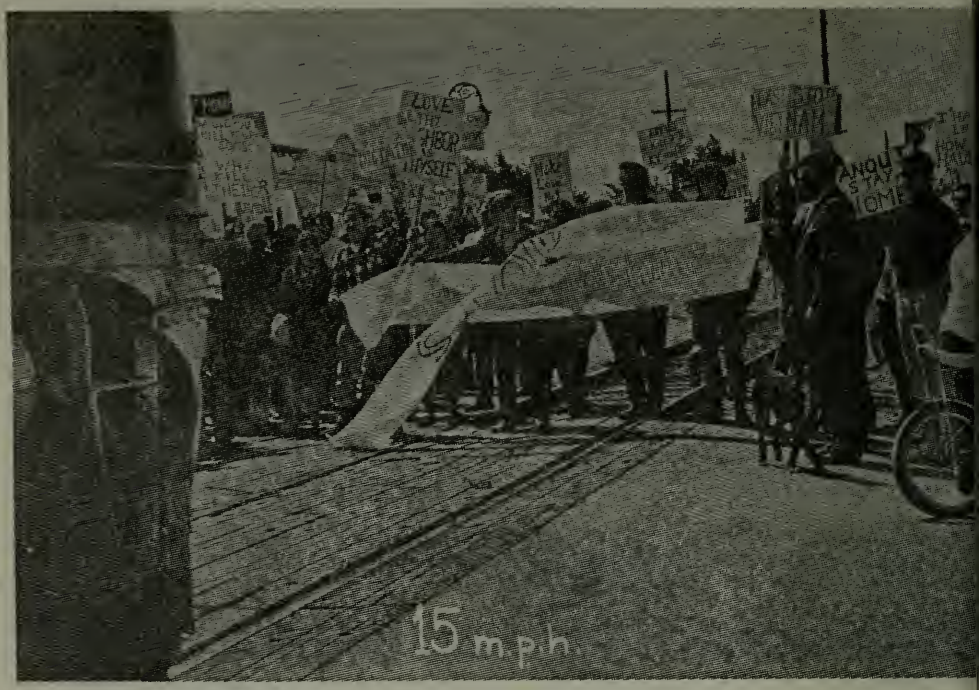
Enthusiastic support of the International Days of Protest came from the International Union of Students, based in Czechoslovakia:

> We in the IUS continue to receive daily messages of solidarity with the Vietnamese people. This wave of protest against the U.S. government and of solidarity with the Vietnamese people has already taken various forms. Students are volunteering to fight side by side with the Vietnamese people, and students are demonstrating their solidarity through their organizations or through special committees, collecting money, medicines, etc.

Among other organizations expressing support with the principles of the October 15-16 demonstrations were the World Federation of Democratic Youth in Budapest, Hungary, and some branches of the Bertrand Russell Peace Foundation. The B.R.P.F. in Buenos Aires, Argentina, even held a teach-in on the subject of the war late in November.

The vocal opposition to the war that exists in all foreign countries has even spurred the formation of a Committee of Americans Abroad for an Honorable Foreign Policy. This group, with headquarters in Chile and sponsors in Brazil,

THE WAR MACHINE ROLLS ON



WE ACCUSE

the U.S. Army and President Johnson

Telegram to President Johnson

WE, REPRESENTING THE VIETNAM DAY COMMITTEE, A PROTEST GROUP CENTERED IN BERKELEY, SPONSORED A PICKET OF A TROOP TRAIN TODAY IN BERKELEY. THE TRAIN WAS TAKING SOLDIERS TO AN EMBARKATION POINT FOR VIETNAM. A NUMBER OF THOSE PICKETING COURAGEOUSLY STOOD DIRECTLY IN FRONT OF THE TRAIN AS IT BORE TOWARD THEM. INCREDIBLY ENOUGH THE TRAIN DID NOT STOP OR EVEN SLOW DOWN, AND IT WAS A MIRACLE THAT MURDER WAS NOT COMMITTED AS THOSE IN THE TRACK LEAPED ASIDE. IT WAS OBVIOUS TO ALL OF US THAT THE ENGINEER HAD ORDERS TO MOVE ON, EVEN IF HE CRUSHED PEOPLE TO DO SO. THIS IS AN EXTENSION TO THE UNITED STATES OF THE WAR IN VIETNAM AND OF THE BRUTALITY THAT CHARACTERIZES IT. WE DEMAND THAT BOTH WARS END IMMEDIATELY.

August 5, 1965

What we must learn from this is that Colonial wars do not stay in the colonies. Brutality and brutalized men will hold sway not only in Vietnam. Suppression of opposition to the war machine can become as prevalent here as it is already in Vietnam. This was the experience of France during the Vietnamese and Algerian wars.

We Must Not Be Intimidated

THREE MORE TROOP TRAINS PASS THROUGH BERKELEY FRIDAY, AUGUST 6.

Picket These Troop Trains

TIME & PLACE: CALL OR MEET AT THE VDC HEADQUARTERS
549-0811 2407 FULTON STREET
OR CHECK AT THE VDC CAMPUS TABLE

request. We are fully aware that this outrageous demand will appear utterly incredible to the average reader unfamiliar with the extent to which two years of unrest and rebellion at Berkeley milked the administration of its will to operate the campus with courage and strength. There had been threats of strikes by Teaching Assistants; threats, at least partially fulfilled, to bring the University "to a grinding halt;" an impertinent and contemptuous attitude by FSM leaders toward University officials; and ever-increasing demands for more and more authority for this vocal minority of students and for the rescinding of most of the rules promulgated by the administration. Students, who presumably came to get an education, claimed superior authority over the administration. This astounding proposal confused the issue of roles. Faculty members are paid to teach, but not to teach classes in sedition or lawbreaking on an extracurricular basis while on the public payroll.[58]

Demonstrations on October 15 and 16, 1965

Professor Smale announced, according to the *Alumni Magazine* account, that the VDC would organize a series of afternoon and evening teach-ins, followed by a torchlight parade to the Oakland Army Terminal. More demands were made of the Berkeley administration. This time the VDC wanted to use the upper Student Union Plaza on the campus with loudspeaker equipment provided by the University, but the request was turned down. The account in the Alumni publication continued:

> "The VDC was the first campus group to refuse to comply with the new regulations. This resulted in the administration removing 'over-sized' and 'out-of-place' political posters from the upper Plaza.
>
> Addressing the Santa Clara Bar Association on October 7, 1965, California Attorney General Thomas Lynch warned that planned demonstrations against U. S. Vietnam policy could result in severe criminal penalties. The VDC immediately accused Lynch of 'maliciously distorting the facts.' They further accused him of deliberately ignoring the change of plans (no civil disobedience) 'because he wants to arrest us anyway.' On October 12 VDC spokesmen

[58] See: *California Alumni Monthly,* op. cit., p. 39.

predicted that there would be from 5 to 10 thousand protesters in the march. A few days later, the Oakland Port Commission denied the VDC use of port property on which the protesters had planned to gather. Convinced that their request for a parade permit would also be refused, Bob Hurwitt of the VDC said that they would march with or without a permit. In concord (sic) with expectations, the Oakland City Council agreed not to grant the parade permit. About 6,000 National Guard troops were ordered to stand by, and Alameda County Sheriff Frank Madigan ordered his full force of 250 officers to go on alert. Heyns issued a statement that the initial protest meeting and teach-in had been planned 'in compliance with campus regulations designed to assure constitutional rights of free speech and advocacy.' In conclusion, Heyns said, 'I join the law enforcement officers in their counsel that members of the campus community accept the same responsibilities for the preservation of law and order as all other citizens of this State.' "

* * * * * * *

"Paul Goodman, author of *Making Do* and other books, declared that the most important thing in the world is not the peace and stability of the University. 'You have done more for the ideal of the university,' he said, 'than any of your professors.' Among the other speakers attacking American policy in Vietnam were Paul Krassner, editor of *The Realist;* Franz Schurmann, director of the Center for Chinese Studies at Berkeley; M. S. Arnoni, editor of *Minority of One;* Hugh B. Hester, retired Brigadier General; William Stanton, Assemblyman from San Jose; Connor Cruise O'Brien, author; and Paul Jacobs, labor expert and author. There were poets, folksingers, comics and politicians, students and professors, all saying stop the war in Vietnam."

* * * * * * *

Stopped by several hundred uniformed officers, the torchlight marchers of Friday night, October 15th, were turned back into Berkeley at the Oakland boundary. They had not obtained a permit to march through Oakland. Except for stragglers and curiosity seekers, the march

returned to a park in Berkeley where there were more speeches. Many people had scoffed when the VDC announced there would be from five to ten thousand participants in their march. The actual count, according to officials who are expert in making such estimates, was between ten and fourteen thousand.

On Saturday, October 16th, about two thousand marchers again approached the Oakland city limits where uniformed officers waited to turn them back. However, just before they reached the line of police, a group of black-jacketed Hell's Angels, catching the spirit of civil disobedience, roared down on the marchers and scattered them in all directions. Many who had been prepared to defy the police now found themselves seeking their protection. After the smoke of battle had cleared, with five of the militant motorcyclists carted off to jail, there was little left of the VDC protest. Ironically, a Berkeley police officer suffered a broken leg in his efforts to protect the defiant VDC marchers.[59]

On Monday, October 18th, Mayor Wallace Johnson of Berkeley demanded that the University invoke firmer control over the use of the campus by organizations mounting these huge protest demonstrations. Likewise, the Mayor of Oakland requested the University to exercise more control over its facilities. Chancellor Heyns responded by stating that he would no longer tolerate the use of the campus for organizing marches through any city without a permit. At noon on the same day, Jerry Rubin, spokesman for the VDC, stated that "if the Chancellor exercises prior censorship by denying the right to assemble and march," there would be another Free Speech rebellion.[60]

Demonstration on November 20, 1965

On November 20 about three thousand demonstrators gathered on the Berkeley campus to prepare for another march through Berkeley and Oakland. A permit to enter Oakland had been obtained by an appeal to the Federal court after the City of Oakland had refused to grant it, but there were severe restrictions. Permission to go to the Army Terminal was denied, as was the right to pass through the crowded portion of the city. The VDC was

[59] Bay Area newspapers of Oct. 17, 1965.
[60] *Alumni Monthly*, op. cit., p. 41.

somewhat disappointed because there were only about seven thousand participants this time, and no incidents of note. The *Alumni Magazine's* account of this demonstration was as follows:

> "The march itself, which by agreement was to terminate at DeFremery Park rather than 7th and Peralta, appeared to most observers as quiet, orderly, and tame. . . The sun was out and familiar figures appeared in the ranks—Rubin, comic Gary Goodnow with flowers in his derby, Berkeley faculty members Morris Hirsch, Gerald D. Berreman, Norman Jacobson and Leon Wofsy; Assemblymen William Stanton of San Jose and John Burton of San Francisco; Bettina Aptheker, who the week before had announced her membership in the Communist Party; Mickey Lima, Party leader in Northern California. . . The five-mile march was well policed by an estimated 1,000 officers with 1,400 in reserve, including 450 National Guardsmen. There was no confrontation at the Oakland city limits as before; the Hell's Angels, who stated they would not appear, did not. Only a minor scuffle, and a couple of egg-tossing incidents broke the calm. At the rally there were speeches and a victory statement by Rubin: 'We have won today a great victory, but I think we must think very seriously what we want in the future.' " [61]

Berkeley Campus Softened Up

From the inception of the FSM revolt in October, 1964, the University administration has consistently retreated before the demands of the rebelling students—always a very small minority. As the campus became more and more politicized by radical elements, what few rules remained were simply ignored. It would serve no purpose here to set forth each meeting of the VDC in campus classrooms—but the blistering attack on the Kerr administration recently issued by the Alameda County Grand Jury states that there were thirty-four separate instances in which the VDC was allowed to use University facilities during September, October and November of 1965. (See: Report, Alameda County Grand Jury, January 27, 1966. Also see Exhibit V, p. 100.)

[61] *California Alumni Monthly,* op. cit., p. 41.

GRAND JURY
COUNTY OF ALAMEDA

COURT HOUSE, OAKLAND 7, CALIFORNIA

January 27, 1966

TO THE HONORABLE, THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

Under the applicable sections of the California Penal Code and under the instructions given by the Presiding Judge of the Superior Court, it is the duty of the Grand Jury to inquire into and report on the needs and operations of County government, and to submit such recommendations as it may deem appropriate.

During the term of this Grand Jury, there have been a large number of criminal prosecutions, a series of arrests, and many demonstrations requiring police supervision, which have been directly related to activities on the Berkeley Campus of the University of California and which have had a profound impact upon Alameda County government. This impact has been reflected in added court costs and congestion, extensive costs to County and local police agencies, and numerous police operations which have resulted in the dilution of the services otherwise available for local community protection. Because of this burden upon local government, the 1965 Grand Jury feels an obligation, in fully carrying out its responsibility to the Superior Court and to the community, to objectively analyze this situation and to offer constructive conclusions and suggestions.

The Berkeley Campus has increasingly become the primary base for activities throughout the Bay Area which have involved law violations and disorder. This fact, coupled with the central University function of educating young people, points up the obligation of the University to share with the community its responsibility for keeping this burden within reason and within the rule of law.

The Grand Jury is concerned with the fact that facilities of the Berkeley Campus of the University of California have been made available to organizations such as the "Vietnam Day Committee", whose leaders and membership are composed largely of persons who are not students or otherwise associated with the University. The "Vietnam Day Committee" has its headquarters off the Campus and its objectives and activities are unrelated to the educational purposes of the University.

Yet it has been able to use Campus facilities on numerous occasions during the past several months to organize and implement actions which have detrimentally affected the surrounding community (see Appendix "A"). Particularly serious is the use by this group of the Berkeley Campus as a staging area for unlawful off-campus activities, such as the attempts to interfere with the passage of troop trains through Berkeley and Emeryville in August 1965, and the open advocacy and planning of "civil disobedience", which in reality involves the deliberate violation of criminal laws.

These and other incidents, occurring on the Berkeley Campus or resulting from activities which took place there, have created an extraordinary burden on governmental services, which has been borne by the County of Alameda and the cities surrounding the Campus. When law and order broke down on the Campus, such as during the so-called "Free Speech Movement" demonstrations of October and December 1964, the agencies of local government were required to step in and regain control of the situation. Likewise, where Campus activity was directed at creating incidents in the community-at-large, such as the marches and troop train demonstrations of the "Vietnam Day Committee", local authorities were required to enforce the law and preserve order. Hundreds of police officers, months of court time, and the services of numerous other public officials and agencies have been necessary to handle the problems emanating from the Berkeley Campus. The total cost of these services has amounted to thousands of dollars over the past two years (see Appendix "B"). In addition, the Berkeley situation has repeatedly required the diversion of manpower and resources, and has involved difficulties in operation, which has deprived the citizens of our community of essential governmental services which could otherwise be made available for their benefit.

It is naturally more costly when the full machinery of our law enforcement and legal system must be invoked to handle Campus situations, which could be better, more easily, and less expensively controlled by the disciplinary powers available to the Regents and Administration of the University. Nevertheless, when this disciplinary authority is not fully utilized, or when Campus officials are unwilling or unable to handle the situation, local government has a responsibility to preserve order. It is for this reason that the University must fully carry out its responsibilities, so that the extraordinary burden on local government and the taxpayers, which has been experienced by this County during the past two years, can be eliminated.

Recommendations

1. The University Administration should consistently and

firmly enforce all University regulations, should take appropriate disciplinary measures whenever rules are violated, and should fully carry out its responsibility for the maintenance of law and order on the Campus.

2. The University Administration should promulgate and enforce clear directives forbidding the use of University facilities for unlawful off-campus action.

3. The University Administration should diligently enforce its own regulations which limit the use of Campus facilities to students, faculty and staff for purposes which are related to the educational function of the University.

4. The University should extend full cooperation to local authorities in the investigation and/or prosecution of criminal cases which originate on the Campus.

5. The State Legislature and the Regents of the University should provide for the reimbursement of county and city government when conditions on or related to the University Campus require extraordinary law enforcement or other local governmental services.

6. The State Legislature, with the cooperation of the Regents, should enact new legislation to improve University control over outsiders coming on and/or using University property and facilities for purposes unrelated to the educational goals and functions of the University.

In order that the taxpayers of Alameda County may be protected, that the facilities of the University may be preserved for the fulfillment of its educational objectives, and that these recommendations may be evaluated for implementation, copies of this document are being forwarded to the Governor of California; the President, the Chancellor at Berkeley, and the members of the Board of Regents of the University of California; the Board of Supervisors of Alameda County; and the members of the Alameda County delegation to the California State Legislature.

Respectfully submitted,

1965 GRAND JURY OF ALAMEDA COUNTY

Henry A. Bruno, Foreman

Grand Jury, County of Alameda

APPENDIX "A"

UNIVERSITY FACILITIES GRANTED TO VIETNAM DAY COMMITTEE

Permission was granted to the "Vietnam Day Committee" to use the following facilities of the Berkeley Campus of the University of California during the months of September, October, and November, 1965.

Date	Time	Facilities
Sept. 15	12-1 p.m.	Sproul Steps
Sept. 16	7:30 p.m. on	30 Wheeler
Sept. 18	7-10 p.m.	155 Dwinelle
Sept. 20	12-1 p.m.	Sproul Steps
Sept. 21	4-6 p.m.	2000 Life Sciences Bldg., (LSB)
Sept. 22	7:30-10:30 p.m.	4093 LSB
Sept. 23	7:30 p.m. on	30 Wheeler
Sept. 28	7:30-10 p.m.	204 Engineering
Sept. 29	12-1 p.m. 9:30-10 p.m. 7:30-10:30 p.m.	Sproul Steps 15 Dwinelle 4093 LSB
Sept. 30	7:30 p.m. on 4-12 p.m.	30 Wheeler Wheeler Auditorium
Oct. 2		Wheeler Auditorium
Oct. 3	12-4 p.m. 7:30-10:30 p.m.	155 Dwinelle 145 Dwinelle
Oct. 5	7 p.m. on	204 Engineering
Oct. 6	7:30-10:30 p.m.	4093 LSB
Oct. 7	7:30 p.m. on	30 Wheeler
Oct. 8	4-6 p.m.	155 Dwinelle
Oct. 9	12-3 p.m.	11 Wheeler
Oct. 11	4-6 p.m.	2000 LSB

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Date	Time	Facilities
Oct. 12	4-6 p.m. 7-11 p.m.	2000 LSB 204 Engineering
Oct. 13	12-1 p.m. 3-6 p.m. 3:15-5 p.m. 4-6 p.m. 7:30-10:30 p.m. 7:30-11:00 p.m.	Sproul Steps Wheeler Auditorium 2003 LSB 2000 LSB 4093 LSB 204 Engineering
Oct. 14	4-6 p.m. 7-10 p.m. 7:30 p.m. on	2000 LSB 11 Wheeler 30 Wheeler
Oct. 15	8 a.m. to 8 p.m. 2-8 p.m. 2-8 p.m. 5-7 p.m. 6-7 p.m.	Lower Student Union Plaza Wheeler Auditorium 145 Dwinelle Sproul Steps 126 Barrows 110 Wheeler 104 Cal Hall 106 Cal Hall 4093 LSB 4505 LSB 308 LeConte
Oct. 16	11-3 p.m.	Wheeler, Rooms 30, 100, 110, 120, 200, 210
Oct. 20	No time listed	Sproul Steps
Oct. 21	7:30 p.m. on	30 Wheeler
Oct. 19	7-10 p.m.	204 Engineering
Oct. 26	3-5:30 p.m.	106 Calif. Hall
Nov. 4	2:30-5 p.m. 7:30-10 p.m.	120 Wheeler 101 Wheeler
Nov. 11	2:30-5 p.m. 7:30-10 p.m.	120 Wheeler 101 Wheeler
Nov. 16	12-1 p.m.	Sproul Steps
Nov. 18	2:30-5 p.m. 7:30-10 p.m.	120 Wheeler 101 Wheeler
Nov. 19	6 p.m.-12	145 Dwinelle

Grand Jury, County of Alameda

Date	Time	Facilities
Nov. 20	9-10 a.m.	Sproul Steps

NOTE: In addition to the above facilities, the Vietnam Day Committee was granted the use of the following facilities on November 21, all day from 9 a.m. to 5 p.m. for the "West Coast Regional Conference of the Committees Against the War in Vietnam": Wheeler Auditorium, Rooms 20, 24, 102, 103, 104, 121, 122, and 123 Wheeler Hall.

APPENDIX "B"

COST TO LOCAL GOVERNMENT

The following reports from governmental agencies in Alameda County reflect a partial summary of the extraordinary expenses which have been required of city and County government as a result of activities related to the Berkeley Campus of the University of California.

Alameda County Sheriff's Department

The following are the man hours and cost for the Sheriff's Department in connection with the "Free Speech Movement" (FSM) and the Vietnam Day Committee (VDC) demonstrations:

October, 1964	(FSM)	914 hours	$ 3,628.60
December, 1964	(FSM)	3673	14,405.31
October 15-16, 1965	(VDC)	3875	16,235.17
November 20, 1965	(VDC)	2126	8,905.12
			$ 43,174.20

The above figures do not include two groups of fifty men each, which were dispatched during August 1965 to support and assist the police departments of Berkeley and Emeryville during VDC demonstrations against troop trains. In addition to the costs set forth above, numerous key personnel of the Sheriff's Department were forced to devote their working time to matters related to the above events before and after the actual incidents, and a great number of personnel were involved for over two months in the court trials of the FSM defendants. During the incidents enumerated herein, the entire Sheriff's Department was placed on a twelve-hour shift basis in order to handle the regular crime-suppression, patrol and custodial functions, as well as to police the emergency incidents discussed above.

Berkeley Police Department

During the period October 1964-January 1965, expenses involved in the handling of "Free Speech Movement" demonstrations on the Berkeley Campus amounted to $9,722.54. This includes only direct costs and does not cover the expense of officers appearing in court as witnesses, trial preparation, or other miscellaneous or indirect costs incurred by the City of Berkeley.

During the period from May to December 1965, protest activities of the VDC required the mobilization of off duty police officers on thirteen separate occasions at considerable overtime cost to the City, as the chart shown below indicates:

Date	Incident	Hrs. of Overtime	Cost	Misc. Cost
May 21,22	Vietnam Protest Teach-in and March	202	$ 950.00	
August	Troop Train Demonstrations	596	2,755.00	

Berkeley Police Department (Cont'd)

Date	Incident	Hrs. of Overtime	Cost	Misc. Cost
Oct. 15,16	Vietnam Protest Marches (2)	1085	$ 5,093.00	$452.00
Nov. 20	Vietnam Protest March	719	3,441.00	997.00
		2602	$12,239.00	$1449.00

Total cost of policing VDC activities: $13,688.00.
This does not include the loss incurred because of the injury and 5-month period of recuperation of a Sergeant injured during the October 16 demonstration.

Oakland Police Department

The following salary costs are reported by the Oakland Police Department. These figures do not include logistical or miscellaneous expenses.

Date	Location	Man Hours	Salary Cost
2 Oct 64	University of California (FSM)	1125	$ 4927.50
3 Dec 64	University of California (FSM)	1999	8755.26
12 Aug 65	34th & Wood (Troop Trains-VDC)	90	406.49
15 Oct 65	Oakland Army Base, etc. (VDC)	5104	23,325.00
16 Oct 65	Oakland Army Base, etc. (VDC)	4851	22,048.94
20 Nov 65	DeFremery Park, etc. (VDC)	4779½	21,248.50
			$ 80,711.87

NOTE: The City of Oakland was partially reimbursed by the University of California, in the amount of $4580.78, for expenses incurred on 2 Oct 64.

Municipal Court

The Municipal Court for the Berkeley-Albany Judicial District reports that extraordinary costs directly chargeable to the trial of FSM defendants amounted to $28,096.75 for the twelve-month period ending December, 1965. This does not include the salaries of regular personnel of the Court, including the Judge, whose efforts were redirected to the handling of this case, nor does it include overtime for regular employees or the cost of utilizing an additional court room, additional cost for marshals, or other expenses which were provided out of the regular Court budget or the budgets of other County departments.

Other Expenses

The expense summaries set forth above do not include a number of additional costs to County government. Personnel and miscellaneous costs incurred by the District Attorney's Office and the Alameda County Probation Department, as well as the costs of other Courts in the County, are not reflected above.

Other Expenses (Cont'd)

Considerable expense was also incurred by the State of California and the Federal Government because of the mobilization of large numbers of California Highway Patrolmen, National Guardsmen, and military personnel required by various incidents described in this report.

In addition, there were constant meetings by the FSU, and even some classes in revolutionary Communism taught by the local director of the Progressive Labor Party on the campus. This is the most radical of the Communist groups. There were rallies, propaganda materials handed out at tables, speeches, and a rash of similar activities which prompted Chancellor Heyns to speak out against them, as we shall see in a subsequent portion of this supplementary report.

There was a time, not many years ago, when the administration barred SLATE from the campus because of its contempt for the rules governing student conduct. Now there was an acceptance of both the VDC and the Progressive Labor Party. The former openly used state-owned property for the purpose of planning an interference with the war effort, and the latter is dedicated to the overthrow of our government. The PLP follows the Mao or Peking line, which is too radical for even the American Communist Party.

If our citizens had been told ten years ago that there would be a situation at Berkeley where almost 800 people would be dragged limp from the University administration building by police; that avowed Communist organizations would be given official recognition and allowed to use campus facilities; that public address systems would be provided by the administration for the use of demonstrators preparing to march out and stop troop trains—these things would have seemed incredible. But as the administration retreated before the savage tactics and increasing demands of the rebellious students, the politicizing process advanced to the point that virtually no rules for firm control of student conduct remained. Occasionally the administration would remark soothingly that all was well since there had been no more invasions of campus buildings by hundreds of defiant students. Matters had become so acute that all seemed comparatively normal if there was no militant demonstration under way.

On September 3, 1965, Chancellor Heyns had announced that henceforth the students *would* be allowed to advocate off-campus sit-ins or other civil rights demonstrations, to distribute political literature on the campus, to collect dues, fees, donations, admission charges and to solicit funds generally, and to use the area at

Telegraph and Bancroft at the entrance to the University —an area formerly off-limits.[62] This, together with more pending changes in rules and proposals for new rules created a confusion in which there might as well have been no rules at all.

As rallies and demonstrations continued without restraint on the Berkeley campus, the VDC leaders became increasingly bold and defiant. From marches they proceeded to attempt to interfere with troop movements, to harassing military installations and a general program of illegal acts. Many sincere dissenters in the VDC dropped away; the militants in the leadership, however, were more determined than ever to step up their revolutionary statements and actions.

The student newspaper, the *Daily Californian,* carried several stories about VDC plans which are most revealing. There was to be a campaign against the training of police dogs, allegedly for sentry duty in Vietnam—which, incidentally, didn't get very far. Other forms of harassing the Armed Forces and Army programs were boastingly outlined.[63]

It remained for Professor Smale to articulate the theory behind the VDC demonstrations and agitation. When interviewed by a newspaper reporter he was asked if he wanted Peking and Hanoi to defeat the United States.

"Of course," he said with a smile. "We want the Viet Cong to defeat the United States for international reasons. If the U. S. is defeated in Southeast Asia, this will help break the American power elsewhere in the world. This would give new impetus to revolutionary social changes in such places as Africa and Latin America, and if surrounded by revolutionary change, it will in turn make it easier to achieve radical social change in the United States." [64]

Comfort for the Enemy

It soon became apparent that the efforts of the Anti-Vietnam demonstrations were of immense value to the enemy. To the headquarters of the national coordinating

[62] *San Francisco Chronicle,* September 4, 1965.
[63] *Daily Californian,* September 21, 1965.
[64] *Oakland Tribune,* October 29, 1965.

committee for all anti-Vietnam war activities in the United States, at Madison, Wisconsin, came a telegram from the National Liberation Front (Viet Cong) in South Vietnam declaring that they had called for a "massive general strike" in South Vietnam to support the October demonstrations in the United States. From Hanoi, North Vietnam, another telegram stated that the National Student Union and the Vietnam Youth Federation "firmly believe our joint efforts and world people's support will compel the U. S. government to stop" (its war crimes). This telegram listed a long series of alleged war crimes in Vietnam.[65] Here, indeed, is solid proof of international Communist collaboration.

We have previously described the International Union of Students as one of the largest international Communist youth organizations. It maintains its main office at Vocelova 3, Prague 2, Czechoslovakia, and issues a journal called *News Service.* In the issue for August, 1965, pp. 7–9, there were expressions of gratitude to the groups in this country that were contributing the most toward helping the Viet Cong and hampering the American war effort. The groups were named as: "Youth Against War & Fascism, May Second Committee, W. E. B. DuBois Clubs of America, Student Nonviolent Coordinating Committee, Student Peace Union, Students for a Democratic Society, Universities Committee on the Problems of War and Peace, Advance Youth Organizations, Berkeley Campus of the University of California, Progressive Youth Organizing Committee, Young People's Socialist League and Women Strike for Peace."

The gratitude of the world Communist youth organization was further expressed as follows:

> "We hugely appreciate the activities of your organization in its solidarity campaign with Vietnam, as well as your practical contribution. We are well aware of the mass demonstrations that have taken place in the United States, as well as the various other forms of protest and solidarity, including the refusal to go to Vietnam to serve in the U. S. army and the many other important expressions of your attitude towards the present state of affairs in Vietnam.

[65] *Daily Californian,* October 15, 1965.

> But the Vietnamese people and all other progressive people are expecting an ever-increasing solidarity and more concrete actions on the part of Americans that will show even more that progressive-minded America does not approve of the aggressiveness and adventurism of its leaders.
>
> . . . We sincerely hope that all conscientious American students will increase their activities in solidarity with the Vietnamese people and students, thus making their effective contribution to this international student movement. The IUS will be grateful to you for any information you can provide us concerning your efforts in this respect. Combining our efforts, we must stop the U. S. government's military adventure in Vietnam!" (See Exhibit II, p. 84.)

Berkeley, it will be noted, was the only campus in the United States singled out for specific commendation by the IUS.

Draft Dodging

Much attention was concentrated on draft evasion tactics of the VDC when it announced the creation of an Anti-Draft Committee. Cooperation was solicited from other radical youth groups, and special attention was given to the Students for a Democratic Society, which is one of the largest and most rapidly-growing groups in the New Left.

One of the handbills issued by the Anti-Draft Committee of VDC stated that among its objectives would be: applying for "conscientious objection on political and moral grounds;" total non-cooperation with the Selective Service; publicizing methods of beating the draft; attempting to clog up the machinery of the draft system; undermining the war effort from within our armed forces. These plans were to be perfected and discussed in detail at meetings scheduled to be held in room 145 Dwinelle Hall on the Berkeley campus, and readers of the announcement were asked to contact Mark Stahl or Steve Cherkoss at VDC headquarters, 2407 Fulton Street, Berkeley, for further information.

This was followed by another handbill signed by the VDC, printed by the Berkeley Free Press and addressed to "All Military Personnel." It purported to give the following "information" on the war:

Why We Are Fighting in Vietnam: "We are fighting on the side of Hitlerism. . ."

Who Is the Enemy: "When the South Vietnamese people see you in your foreign uniform they will think of you as their enemy. You are the bombers of their towns. . ."

Free Elections: "We decided not to allow any free elections until we are sure we can win. . ."

Fighting for Democracy: "Most people support the NLF" (National Liberation front, or Viet Cong)."

The Guerrillas: "Their secret is that they know why they are fighting."

Crushing the Resistance: "Prisoners are tortured. Our planes drop incendiary bombs on civilian villages . . . our soldiers shoot at women and children. . ."

Following Orders: "As a soldier you have been trained to obey orders, but as a human being you must take responsibility for your own acts. . ."

Oppose the War: "Keep your eyes open . . . take every chance you get to talk to your fellow soldiers about this war . . . don't do any more than you have to . . . good luck." (See Exhibit VI, p. 114.)

Reference to this handbill was made in another issue at about the same time, and entitled "How to Beat the Draft." This one read, in part, as follows:

"1. Be a Conscientious Objector.

2. Have a 'Demonstration' during your preinduction physical. Arrive wearing signs 'End the Draft Now,' or 'Get Out of Vietnam'—distribute leaflets to fellow-inductees.

3. Refuse to sign the loyalty oath, and don't mark the RED list. . .

4. Be 'gay.' Play the homosexual bit.

5. Note from Doctor. Get him to attest to allergy, bad knee, shoulder, etc.

6. Be an epileptic. Borrow an epileptic medal . . . fake a seizure. . .

Approved For Posting

ATTENTION ALL MILITARY PERSONNEL

You may soon be sent to Vietnam. You have heard about the war in the news; your officers will give you pep talks about it. But you probably feel as confused and uncertain as most Americans do. Many people will tell you to just follow orders and leave the thinking to others. But you have the right to know as much about this war as anyone. After all, it's you—not your congressman—who might get killed.

WHY ARE WE FIGHTING IN VIETNAM?

We are supposed to be fighting to protect democracy in Vietnam, and yet our own government admits that South Vietnam is run by a dictatorship. General Ky, the latest military dictator, is as bad as they come. In a recent interview he said: "People ask me who my heroes are. I have only one -- Hitler. I admire Hitler because he pulled his country together when it was in a terrible state." (London Sunday Mirror, July 4, 1965).

General Ky doesn't mean much to us; we're not even sure how to pronounce his name, but the South Vietnamese have lived under men like him for years. As far as the Vietnamese are concerned, we are fighting on the side of Hitlerism; and they hope we lose.

WHO IS THE ENEMY?

U.S. military spokesmen have often said that their greatest problem is finding the enemy. The enemy, they say, is everywhere. The old woman feeding her chickens may have a stock of hand grenades in her hut. The little boy who trails after the American soldiers during the day slips out to give information to the guerillas at night. The washerwoman at the American air base brings a bomb to work one day. It is impossible, say the military, to tell which are the Viet Cong and which are the civilians.

And so, because the whole Vietnamese people seem to be the enemy, the military is taking no chances. They use tear gas -- a weapon designed for use against civilians. They order American troops to fire at women and children -- because women and children, after all, are firing at American troops. American fighter planes destroy civilian villages with napalm; American B-52's are flattening whole regions. That is why the war in Vietnam is so often called a "dirty war."

When the South Vietnamese people see you in your foreign uniform, they will think of you as their enemy. You are the ones bombing their towns. They don't know whether you're a draftee or a volunteer, whether you're for the war or against it; but they're not taking any chances either.

FREE ELECTIONS

The Vietnamese would like to vote the foreigners out of their country, but they have been denied the chance. According to the Geneva Agreement of 1954, there were supposed to be elections throughout Vietnam in 1956. But the U.S. government was certain that our man in Vietnam, Premier Diem, would lose. So we decided not to allow any election until we were sure we could win. Diem set up a political police force and put all political opposition -- Communist and anti-Communist -- in jail. By 1959, it was clear there weren't going to be any elections, and the guerillas known as the Viet Cong began to fight back. By 1963 our government was fed up with Diem, but still wasn't willing to risk elections. Our CIA helped a group of Vietnamese generals to overthrow Diem and kill him. Since then there have been a series of "better" military dictators. General Ky -- the man who admires Hitler -- is the latest one.

FIGHTING FOR DEMOCRACY

Your job as a soldier is supposed to be "to win the people of South Vietnam." Win them to what -- democracy? No, we keep military dictators in power. What then? The American way of life? But why should they care any more about our way of life than we care about theirs? We can't speak their language or even pronounce their names. We don't know anything about their religion or even what it is. We never even heard of Vietnam until Washington decided to run it.

You are supposed to be fighting "to save the Vietnamese people from Communism." Certainly Communist influence is very strong

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in the National Liberation Front, the rebel government. Yet most of the people support the NLF. Why? Many of the same people who now lead the NLF led the Vietnamese independence movement against the Japanese during World War II, and then went on to fight against French colonial rule. Most Vietnamese think of the NLF leaders as their country's outstanding patriots. In fact, many anti-Communists have joined the guerrilla forces in the belief that the most important thing is to get rid of foreign domination and military dictators. On the other hand, very few Vietnamese support the official government of General Ky. His army has low morale and a high desertion rate.

THE GUERRILLAS

The newspapers and television have told us again and again what a tough fighter the Vietnamese guerrilla is. Short of ammunition and without any air cover, he can beat forces that outnumber him five or ten to one. Why do they have such high morale? They are not draftees; no draftees ever fight like that. They are not high-paid, professional soldiers. Most of them are peasants who work their fields; they can't even spare the ammunition for target practice.

Their secret is that they know why they are fighting. They didn't hear about Vietnam in the newspapers; they've lived there all their lives. While we were in high school, they were living under the Diem regime and hating it. Now American planes are bombing their towns and strafing their fields; American troops have occupied their country; and if they complain out loud, an American-supported dictator sentences them to jail or the firing squad. Is it any wonder that they fight so fiercely?

CRUSHING THE RESISTANCE

The war in Vietnam is not being fought according to the rules. Prisoners are tortured. Our planes drop incendiary bombs on civilian villages. Our soldiers shoot at women and children. Your officers will tell you that it is all necessary, that we couldn't win the war any other way. And they are right. Americans are no more cruel than any other people; American soldiers don't enjoy this kind of war. But if you are going to wage war against an entire people, you have to become cruel.

The ordinary German soldier in occupied Europe wasn't especially cruel, either. But as the resistance movements grew, he became cruel. He shot at women and children because they were shooting at him; he never asked himself why they were shooting at him. When a certain town became a center of resistance activity, he followed his orders and destroyed the whole town. He knew that SS men were torturing captured resistance fighters, but it wasn't his business to interfere.

FOLLOWING ORDERS

As a soldier you have been trained to obey orders, but as a human being you must take responsibility for your own acts. International and American law recognize that an individual soldier, even if acting under orders, must bear final legal and moral responsibility for what he does. This principle became a part of law after World War II, when the Allied nations, meeting in London, decided that German war criminals must be punished even if they committed war crimes under orders. This principle was the basis of the Nuremberg trials. We believe that the entire war in Vietnam is criminal and immoral. We believe that the atrocities which are necessary to wage this war against the people of Vietnam are inexcusable.

OPPOSE THE WAR

We hope that you too find yourself, as a human being, unable to tolerate this nightmare war, and we hope that you will oppose it. We don't know what kind of risks we are taking in giving you this leaflet; you won't know what risk you will be taking in opposing the war. A growing number of GIs have already refused to fight in Vietnam and have been court-martialed. They have shown great courage. We believe that they, together with other courageous men who will join them, will have influence far out of proportion to their numbers.

There may be many other things you can do; since you are in the service, you know better than civilians what sorts of opposition are possible. But whatever you do, keep your eyes open. Draw your own conclusions from the things you see, read and hear. At orientation sessions, don't be afraid to ask questions, and if you're not satisfied with the answers, keep asking. Take every chance you get to talk to your fellow soldiers about the war.

You may feel the war is wrong, and still decide not to face a court-martial. You may then find yourself in Vietnam under orders. You might be forced to do some fighting -- but don't do any more than you have to. Good luck.

Vietnam Day Committee
2407 Fulton Street
Berkeley, California
549-0811

7. Jail record (if you have it).
8. Play psycho. Tell them you're a secret agent for God Johnson, etc.
9. Arrive drunk. Being late helps. . .
10. Arrive high. Use a common pin on your arm a few weeks in advance; check with your friends who 'shoot'—(convince doctor of addiction).
11. Be an undesirable. Go without shower, arrive dirty, stink. Long hair helps.
12. Be a *'f----up.'* Don't do anything right.
13. Be a trouble-maker. Refuse to follow orders. (You don't have to; you're not in the army.) Be antagonistic; smoke where signs say NO SMOKING. . . . etc.
14. Bed-wetting. Tell them you wet the bed; if they don't defer you, prove it. "Extra Special Service for those who really care. Join the army . . . and really screw things up. Tell your buddies the truth about . . . Vietnam. (Detailed pamphlet on this is currently in preparation.) "A deluxe booklet containing all the ways and means and whys of beating and defeating the draft is nearing completion and will soon be issued at nominal cost. If you have suggestions, please forward them to Dept. 2017-J, 2407 Fulton Street, Berkeley, or contact (phone) 549-0811, Xsidney, or draft counsel."

"Xsidney" turned out to be Sidney Cherpitel, active in the VDC demonstrations and other activities, and sentenced to serve sixty days in Federal jail at Lompoc for trespassing on government property at the Oakland Army Terminal. He gave his address as 6424 Regent Street, Berkeley, his age as 22. He stated that he was the author of the handbill and regarded himself as "a flexible Marxist." He was formerly a student at Kansas State University.

At the same time the Anti-Draft Committee was formed, the VDC announced that its Medical Aid Committee was collecting blood and supplies for the use of the Viet Cong and planned to send them through the American Red Cross. This brought a statement from General James F.

Collins, Red Cross President, that he would not accept the mission, as that would be giving aid and comfort to the enemy.[66] The collecting went ahead, nevertheless. Six days after General Collins' statement, the VDC's Medical Aid Committee announced that it had obtained pledges for 43 pints of blood during a campaign on the Berkeley campus.[67]

The Berkeley student newspaper, *Daily Californian* of February 24, 1966, reported that the Medical Aid Committee for Vietnam had sent $1,000 to Vietnam to "provide medical supplies for the victims of United States aggression." The committee chairman, Steve Fox, stated that the money was sent to the Liberation Red Cross of South Vietnam. A letter from the National Liberation Front (Viet Cong) conveyed thanks to those who had taken part in the "solidarity action."

Pledges for blood donations to be sent to the enemy in North Vietnam were also obtained at Stanford, and these actions provoked counter-action by the Pre-Medical Society and the Interfraternity Council at Berkeley, through which 693 pints of blood were actually collected to be sent to our American forces and their South Vietnamese allies. It was not only the brazen efforts to persuade our soldiers that their mission was wrong and to collect blood for the enemy that began to create anger and deep resentment among the people of the Bay Area, but also the introduction of other incendiary issues by the VDC. Newspaper accounts described how, at VDC meetings, the Watts riots were eulogized[68] and how the classrooms and campus area of the state university were being freely used to advocate acts of lawlessness in nearby communities. The accounts disclosed that the leaders in VDC activities were the same Communists and fellow-travelers who had become well-known through their support of the FSM rebellion. They included: Mickey Lima, Bettina Aptheker, Archie Brown, Harvey O'Connor, Michael Laski, W. H. Sherman, Steve Cherkoss, Mortimer Scheer, David Jenkins, Malvina Reynolds and Douglas Wachter. Others appeared from time to time, and as their participation continued and accounts were

[66] *San Francisco Chronicle,* November 4, 1965.
[67] *San Francisco Chronicle,* November 10, 1965.
[68] *Berkeley Gazette,* October 26–28, 1965.

printed in the press, the pattern of leadership was apparent.

Business establishments in the East Bay became disturbed as, from the campus sanctuary at Berkeley, thousands of marchers entered the Berkeley and Oakland communities, attracting huge crowds, jamming the streets, forcing hundreds of police officers and National Guardsmen to line the course of the marches, and creating all the emotional tensions that inevitably accompany such demonstrations. In late October, Gerald W. Blakely told the Industrial Development Conference in San Francisco that "Berkeley's continuing protests against the political and social order have become a major deterrent in California's drive to attract industry." [69]

Charges that the University at Berkeley was being used as a breeding place for off-campus lawlessness were answered by President Kerr from Riverside, where he had been attending a Regents' meeting. He said: "If there are individuals who have knowledge of illegal acts on any campus, these persons should bring such actions to the attention of the appropriate law enforcement agencies as well as to the chancellor of the campus involved." [70]

The abdication of responsibility for maintaining order and discipline at Berkeley appears to be the confession of a weak administration. It tried—and failed—to maintain order and discipline during the rebellion of 1964–1965; then it rescinded the rules it was unable to enforce, and sought to shift its own responsibilities to the police departments of Oakland and Berkeley. Each of the University's campuses has its own police department, and the members wear uniforms, have guns, and are authorized to make arrests under the supervision of the University's administration. There was a time—before FSM—when the campuses effectively handled their own law enforcement problems, and if necessary called in other agencies for assistance. That situation now appears to have been reversed.

In the name of free speech, civil liberties and academic freedom, the campus at Berkeley has been harboring radicals who have no connection with the institution, and who are allowed to use the state facilities without paying any

[69] *San Francisco Chronicle,* October 22, 1965.
[70] *Oakland Tribune,* November 20, 1965.

fees, and to plot acts of civil disobedience that are illegal by their very definition. Conspiring to abandon motor vehicles on railroad tracks is unlawful; conspiring to interfere with the movement of troop trains or any other trains, for that matter, is illegal; the issuance and distribution of propaganda to persuade young men to avoid serving in the armed forces under the Selective Service System and to disobey their officers when in service is illegal. It is not essential that the eventual crime be committed on the campus. The plans and the conspiracies which are themselves crimes, are conducted there—on the property of the University—without the slightest connection with any academic function of the institution.

Representatives of the VDC picketed Vice President Hubert Humphrey in December, 1965, and some of them managed to have a brief conference with him. It was brief because the Vice President publicly denounced them and their movement. These VDC spokesmen were Professor Morris Hirsch, J. W. Smith, Jr., Thomas Duncan and Robert Scheer.[71]

There was another demonstration several days later, when Secretary of State Dean Rusk appeared to address the AFL-CIO Convention in the San Francisco Civic Auditorium. About thirty VDC pickets made their way into the galleries, and when they were spotted by President George Meany, he shouted, "Throw the kookies out!" Union members promptly ejected the pickets, and some of them had to be restrained from taking pokes at the "kookies."[72]

Vietnam Propaganda at Garfield Junior High School

Early in January, 1966, the City of Berkeley granted to Steve Cherkoss, 23, of 2732 Haste Street, a permit to hand out VDC literature at Rose and Grant. This was near the premises of Garfield Junior High School. Cherkoss has been identified with several of the more militant Marxist youth groups. His principal devotion is to the May Second Movement—described in our 1965 Report—and to the Anti-Draft Committee of the VDC. Cherkoss passed out literature to these youngsters, and a few days

[71] *Oakland Tribune,* December 4, 1965.
[72] *Oakland Tribune,* December 10, 1965.

later one of them, aged 13, appeared in classes wearing various symbols for "peace." He was suspended for one day because he refused to remove them. His father, John Miltenberger, organized a group of 175 parents and others, and on the evening of January 18th went to a meeting of the Berkeley Board of Education. They obtained a concession to the effect that a course on the Vietnam war should be started at the school, and that henceforth the students would be entitled to wear the controversial emblems.

We set forth below a questionnaire given to seventh grade students at Garfield Junior High, as part of their course in history. Its wording and content, we believe, speak for themselves. This deals entirely with Russia and Communism, and is presented in such a way that the positive assertions are made, and youngsters asked if they disagree.

"7th Grade, Garfield Junior High—History,
Berkeley, California. Home Assignment,
January 17, 1966.

WHY IT IS IMPORTANT FOR US TO STUDY RUSSIA.

1. If we wouldn't be so anti-Communist many of you in this classroom wouldn't have to serve in the armed forces.
2. A large share of our tax money goes into building useless bombs. By laying down our arms this would be a good example for the Communists and also save us money.
3. We shouldn't hate or dislike the Russians. After all they are only people like ourselves.
4. If we were more willing to give in to what the Russians want, we wouldn't have to worry so much about fighting a war.
5. We should stop opposing the Communists so that we would not have to spend any more money on influencing underdeveloped countries such as Africa to follow American thinking rather than Russia's ideas.
6. The best way to fight Communism is to worry about our own problems at home and let the rest of the countries of the world do the same.

7. What do we care if other countries become Communistic; after all shouldn't they make their own decision as to what they want to do?
8. Why should some people have more than others? Under the Communist system everyone could have as much as the next person.
9. There are many inequalities in this country such as racial discrimination, poor housing and unfair employment practices. Perhaps it is time for a change as our way of life hasn't solved these problems. The Communists offer equality for all so why shouldn't we try their way for a while?"

As this supplementary report is being prepared, the VDC is still active at Berkeley. Delegates were recently sent to a National Coordinating Convention in Washington, D. C., called to determine future policies. Approximately 1500 people attended, and there was a split between the moderate and the radical wings. The radicals, represented by the Berkeley VDC, the Trotskyites and other such groups, were outvoted by the so-called moderates. Jerry Rubin threatened to withdraw the support of the Berkeley organization.

In December, 1965, Rubin, J. W. Smith, Jr., and Larry Loughlin went to help reorganize the National Coordinating Committee at its headquarters in Madison, Wisconsin. But when the Rubin delegation backed a resolution to bring the American troops back from Vietnam immediately, it was defeated by a margin of 38 to 25. More demonstrations were planned for March 25 and 26, and the Berkeley trio returned home, leaving a perplexing factional situation at the Madison office.

Chancellor Heyns Discusses the Demonstrations

In early November, 1965, Chancellor Roger Heyns addressed the Academic Senate at Berkeley. His remarks were the first refreshing utterances by anyone in responsibility since the demonstrations began at the strife-torn campus more than a year previously. He was quoted in the *Alumni Magazine* as follows:

> "How do we keep an open forum? When the nonstudent problem is discussed, it is usually in terms of a former or prospective student sitting at a table

> on the Plaza, or attending meetings on campus and voting. But what about the use of the campus by organizations which, while nominally registered student organizations, are in fact controlled and run by non-students? What about the recruitment through off-campus publicity of people from the Bay Area to assemble on campus? In both cases our forum becomes a political forum for the Bay Area, indeed for the whole of Northern California. A ready microphone and audience is a natural inducement to making a student forum a regional one. *I don't believe we would care to defend providing University equipment and space for such a project.*" (Our italics.)

The *Alumni Magazine* concluded by remarking: "This is perhaps the key question facing the campus." [73]

Chancellor Heyns, of course, pinpointed one of the causes for growing and widespread criticism of the University administration that tolerates a handful of radical students using the campus to attract thousands of non-students from all over the northern part of the state and even from as far away as the East Coast. The Berkeley campus has become known as the headquarters for these massive demonstrations, and it is difficult to understand why the administration, whose responsibility it is to see that the campus is used for educational purposes, does not take action to put these practices to an end. The longer the administration is timid about asserting its authority, the more difficult the job will become.

International Control and Collaboration

According to the statements recently published by Morris R. Wills, who defected to Red China and has returned to the United States, there is an elite group of English-speaking residents in Peking who have master-minded the campus demonstrations throughout the world. There are about fifteen Americans in the group, and its leader is Israel Epstein. Contacts are maintained through England, and as American visitors to that country come and go, they receive instructions from the hard-core coterie of Red Chinese Communists. Sidney Shapiro is another

[73] *California Alumni Monthly,* op. cit., p. 41.

who takes a leading part in these actions. Wills described the operation:

> ". . . The Chinese have tried to inspire a lot of objections in the United States to the Vietnam war. They do it mostly through England. There is always a dribble of Americans coming and going from Peking, not just ordinary tourists and those who sneak into Communist China, but people who have some contact with this elite group. Now, they come to China and go through to North Vietnam. In Peking this is known as the 'milk run.' The Party is setting up direct contacts in New York and in Washington to get more people to come.
>
> When the Americans began bombing North Vietnam last year, Michael Shapiro [not to be confused with Sidney, above-mentioned] called a meeting of all foreigners in Peking. He indicated the Central Committee of the Party wanted them to show more enthusiasm for Chinese support of the North Vietnamese. They discussed what more they could do to develop the movement in America—on campuses, among the Negroes and everywhere else—to bring Americans into the chain. They were mainly interested in professors and students. The Chinese Party envisioned the Vietnamese war coming to an end because of the movement in America." [74]

One of the most significant documents distributed by the Berkeley VDC and which made its appearance from time to time on the campus up to and including February, 1966, is a 42-page description of the international ramifications of the movement. It is entitled "The International Protest Movement Against American Intervention in the War in Vietnam—A Report Prepared by the International Secretariat of the National Committee to End the War in Vietnam, Suzanne Pollard, Chairman," and bears the name Vietnam Day Committee, Berkeley, California, as publisher and distributor. (Miss Pollard has been mentioned as having been connected with the Berkeley VDC.) This document contains pictures of student demonstra-

[74] "Why I Quit Red China," by Morris R. Wills, *Look Magazine*, February 22, 1966, pp. 85 and 91.

tions in numerous foreign countries, messages of encouragement for more and vigorous activities, and a resumé of the events that gave rise to this international movement. The introduction states that:

> "Last October 15th and 16th were 'International Days of Protest against American intervention in the war in Vietnam.' The idea for this protest began in the United States, where large nationwide demonstrations were planned by more than 40 member organizations of the National Committee to End the War in Vietnam. Since a few individuals had contacts with peace movements in other countries, it was hoped that by informing them about the American days of protest they might also be willing to lend their support. An International Committee—affiliated with the Vietnam Day Committee of Berkeley, California—was formed late in June, 1965. The immediate task of this committee was to establish contacts with organizations and individuals abroad and to publicize among them the forthcoming international protest. Hundreds of letters were sent out, including 'international calls' which were prepared and printed in seven languages. The response was immediate and encouraging . . ."

Some of the Americans who happened to have contacts with "peace groups" abroad have already been mentioned in our 1965 Report. Representatives of some of the American "peace groups" have also been mentioned as traveling illegally to Havana, Hanoi and Peking. Some of them have been active at Berkeley, others have been performing their roles by speaking and organizing at university campuses in this country and Canada.

The collaborating organizations were mobilized with astonishing speed by these Americans, and according to the document we are describing, there are now at least 209 groups (scattered over the entire world, including Iron Curtain countries,) actively participating in the drive to throttle our war effort, and this is not taking into consideration the many sub-groups, such as various student organizations at each university in the Latin American countries. This report by the Vietnam Day Committee is far too long for inclusion here, but it is

important to mention because it removes all doubt about the international Communist organization behind these demonstrations. Also, it confirms the fact that Berkeley has become the pivotal base for the movement.

There can be no question about the fact that the Berkeley VDC was running the show, nor that it was freely using the University campus for the purpose of planning illegal off-campus acts. The organization has said so. It issued a leaflet from its headquarters at 2407 Fulton Street, Berkeley, and distributed it on the campus, stating in regard to planning the October 15 and 16, 1965, demonstrations:

> "The initiating body for these *International Days of Protest* is the Vietnam Day Committee, a student-faculty-community group known for its antiwar activities, particularly the attempt to stop trains carrying troops bound for Vietnam. . .
>
> We will tell soldiers that under the 1945 London Treaty and the Nuremburg Codes they bear *individual responsibility* for committing war crimes, even if they are following orders from a superior officer or obeying national law. We will ask them to refuse to fight in Vietnam. This will be the nation's first teach-in in the midst of an army terminal."

Until September 4, 1965, the Berkeley administration had insisted that, although other rules for student conduct were modified and liberalized or rescinded, there was one that remained. That was the rule, which we have previously referred to, that prohibited students from advocating illegal activities off-campus, and using campus facilities for the purpose of plotting them. The *San Francisco Chronicle* even editorialized, praising the Kerr administration for its steadfast insistence on that rule, above all. In an editorial on November 26, 1964, it declared:

> "Under liberalized regulations, students may now assemble, speak, advocate, solicit and recruit to their heart's content without restrictions—save one. They are subject to university discipline if they advocate on campus actions that are illegal under Federal or California laws. . .

> The campus cannot become a breeding-place for off-campus lawlessness. As President Kerr has observed, the university is not a fortress from which students (or non-student agitators) may mount attacks on the surrounding countryside. . ."

And during an interview for the same paper on January 6, 1965, Kerr is quoted as stating:

> ". . . We cannot allow conspiracies which commit illegal acts off campus to be organized on campus."

But when the propaganda issued by the VDC was distributed on campus declaring an intent to commit illegal acts elsewhere, this once-solid rule vanished. Eight months after Kerr's brave and positive statement was publicized, his new Vice Chancellor at Berkeley, Earl Cheit, announced that the students *would* thenceforth be allowed to use the campus for the purpose of plotting illegal off-campus acts of civil disobedience.[75] The rule was rescinded about nineteen days before the massive VDC demonstration commenced.

After President Johnson announced that bombing of North Vietnam would be resumed after the 1965–1966 holiday cease-fire, the VDC circulated petitions to get signatures of professors and Teaching Assistants at Berkeley who would promise to devote their regular class time to lecturing the students about Vietnam. Attendance would be subject to the same rules as class attendance—therefore, these professors and T. A.'s were promising to take advantage of a captive audience. The seventeen who signed this petition were:

Ruggiero Steffani—Italian
Henry Sanoff—Architecture
Morris Hirsch—Mathematics
John Leggett—Sociology
Robert Blauner—Sociology
Paul Ivory—Economics
Allen Temko—City Planning
Jose Nun—Political Science
Fred Stripp—Speech
Michael Nagler—Classics
Jack Block—Psychology
Joanne Block—Psychology
Gerald Berreman—Anthropology
Daniel Slobin—Psychology
Robert Somers—Sociology
John W. Dyckman—City Planning
Peter Steffens—Journalism

Instruction packets were issued to faculty members and Teaching Assistants, providing materials with which to supplant the regular courses of instruction. It should be

[75] *San Francisco Chronicle,* September 4, 1965.

obvious at this point that each of these employees of the state university was hired to teach prescribed courses. Each student who paid his tuition, purchased his books and came to this institution for the purpose of attending classes of his choice and obtaining an education was entitled to something other than instructors who deliberately violated their contracts of employment and abandoned every vestige of academic freedom by perpetrating a fraud on these students and attempting to imbue them with the radical political views of the instructor.

It is significant that this flagrant abuse of academic principles brought a cautious rebuke from Chancellor Roger Heyns, who replied to a request by thirteen faculty members to substitute discussion of the Vietnam war for their regular subjects in classes February 7 and 8, 1966. Heyns is quoted as saying such action "might constitute a 'breach of academic freedom'." [76] A few days later, on February 15, Chancellor Heyns was presented with a petition signed by 27,000 "aroused" citizens protesting the high-handed actions of the Vietnam Day Committee and demanding that the University return to its proper role of teaching students. In reply to the charges, Chancellor Heyns is quoted as saying that recent rallies have been "quite small and did not interfere with teaching activities." [77]

On February 9, the *Daily Californian* reported that the VDC plan to substitute workshops on Vietnam for classes "met with only limited success on the first day."

However, this statement is refuted by a document prepared by a conservative student group which took upon itself to answer issues raised in an Italian class which was turned into a propaganda workshop on the Vietnam war, using the text supplied by the Vietnam Day Committee.[78]

In a statement issued to the press soon after this VDC action, President Kerr praised Chancellor Heyns for his handling of the affair, saying that the VDC effort was "recognized by both the campus and the press as a failure." This statement was prompted by a letter Chancellor Heyns sent to Kerr in which he informed the President that he had learned of "just four clear cases of disrup-

[76] *Daily Californian,* February 8, 1966.
[77] *Oakland Tribune,* February 15, 1966.
[78] *"Reply to the VDC Pamphlet,"* Cal Conservatives for Political Action, February, 1966.

tion of classes, which were brief and were thoroughly investigated." [79]

When a criticism is issued concerning subversion on the campus, or when documents are sought pertaining to the academic qualifications of a prospective and controversial teacher, there is protest that the sacred precincts of academic freedom are being violated. But here was a flagrant case—the deliberate conversion of classrooms into radical political forums. Both the President and the Chancellor had knowledge of at least four cases, but the only outcome so far recorded is the praise heaped on the Chancellor by the President for his handling of the matter. At least three hundred outraged students signed a protest against the invasion of *their* rights; citizens have protested *en masse,* but the administration merely indulges in self-admiration, or scolds its critics.

The *Los Angeles Times* quoted one of the VDC leaders and nailed down the real significance of this somewhat abortive attempt by the organization:

> "We've been doing easy things like holding rallies and sitting down around a police car. Now we are trying to go into the classroom, and that is hard. It hasn't been very effective this week, but it's a step forward. Next time it will be easier." [80]

As the VDC "teach-ins" and other activities mounted in intensity across the country at universities and colleges, there was a reaction from liberal professors who were opposed to our involvement in Vietnam, but who disdained to resort to the public antics and pressures that were being operated under VDC direction. As the pattern of collaboration with the enemy emerged, and the same familiar Communists went from one front organization to another, from FSM to FSU to VDC, and as messages of gratitude, encouragement and exhortation came in from the National Liberation Front (Viet Cong), from Red China and Communist Parties abroad, these liberals renounced the demonstrators. They discovered an old truth: liberals can never collaborate with Communists; there comes a day of reckoning. The liberals are sincere. So are Communists, for that matter, but they are faithful

[79] *Oakland Tribune,* February 19, 1966.
[80] *Los Angeles Times,* February 10, 1966.

only to their revolutionary commitments, and they callously utilize all causes for their own ulterior purposes. They do not consider themselves bound by loyalty oaths, laws—other than their own—or ethics or customs of any capitalist society.

The late Eleanor Roosevelt, acclaimed throughout the world as a great liberal, put the matter admirably in a letter to James Dombrowski, dated May 11, 1947. She wrote:

> "I tried working with the American Communists, as you know, and have long since given up trying. I cannot work with anyone who is not completely honest, and American Communists are not honest. I know that they often work for the same objectives, and do good work, but that does not alter my opinion." [81]

The Mime Troupe

Among the Bay Area organizations cooperating with the Berkeley Vietnam Day Committee is the San Francisco Mime Troupe. This theatrical group was started in 1959 and used as a rehearsal hall the offices of the San Francisco New School, which emphasizes Marxism in its courses; also, there was some interchange of personnel between the two groups.[82]

"Mime" signifies acting by the use of mimic gestures, such as used with such outstanding success by Charlie Chaplin in the silent films. Some of the gestures indulged in by the Mime Troupe at the Berkeley and Davis campuses were incredibly obscene, as indicated by reports of two persons who witnessed the performances.

During the summer of 1965 the Mime Troupe scheduled a production for public parks in San Francisco. Members of the Recreation and Park Commission had viewed the shows, however, and unanimously decided they were too vulgar for public presentation. At that time most of the business matters of the Troupe were conducted by Ronald G. Davis, its manager, and Rebecca Jenkins, its sec-

[81] Senate Subcommittee Report, op. cit., p. 2.

[82] *San Francisco Chronicle,* January 5, 1964 on San Francisco New School; handbills of Mime Troupe, and *National Guardian,* August 7, 1965.

retary. Miss Jenkins is the daughter of David Jenkins, identified as a member of the Communist Party and former director of the California Labor School in San Francisco. That school, as we set forth in our 1965 Report, was investigated by the Subversive Activities Control Board, found to be a Communist indoctrination institution, and soon thereafter disbanded.

The Mime Troupe persisted in giving its shows in the San Francisco parks in spite of the ban issued by the Commission, with the result that the manager, Mr. Davis, was arrested and convicted for the specific offense of presenting a program at Lafayette Park without a permit. The jury deliberated for 45 minutes.[83] Accounts of this occurrence were carried in the Bay Area newspapers and all made it very clear that "lewdness" was the reason for the ban.

Nevertheless, the action of San Francisco in forbidding the Mime Troupe's objectionable performances in that most liberal of cities did not convince the administration at the University that its performance was unfit for production on the campus. The Vietnam Day Committee sponsored the troupe in fund raising performances at Berkeley, and the program "Civil Rights in a Cracker Barrel" was produced on the evening of September 30 in Dwinelle Hall, and on October 2 and 3, 1965, in Wheeler Hall. The affairs were open to the public, tickets being sold at the A.S.U.C. Box Office on the campus and at the Vietnam Day Committee headquarters, 1407 Fulton Street, Berkeley.

One of the performances was attended by a member of the Berkeley campus police department, a University employee. He made a written report of his observations to a superior officer and we obtained a photostatic copy. We originally intended to reproduce the entire report herewith as an exhibit, but decided not to do so because of the extremely foul and disgusting nature of the production, which included a simulated act of masturbation. The report is an account of a filthy, disgusting, debased spectacle having nothing whatever to do with the educational process, should never have been allowed on the campus, and was in total bad taste. After the publicity attending the banning of the production in San Francisco,

[83] *San Francisco Chronicle,* November 2, 1965.

there was no excuse for the administrators at Berkeley to plead innocence.

The fact of the matter was that nobody in authority has been paying the slightest attention to the nature of the shows and entertainments exhibited on the campus. The Mime Troupe performance was held for the express purpose of raising funds for the Vietnam Day Committee. It may be contended that since the program was witnessed by University students on the Berkeley campus that we should reproduce the full official account mentioned above, but the filthy nature of its contents prompted our decision to omit it.

During the VDC parade through Berkeley and Oakland in November, 1965, the Mime Troupe provided diversion and "entertainment." It also participated in a rally against U. S. involvement in Vietnam at Lake Merritt Park in Oakland on August 21, 1965, with such other groups as Students for a Democratic Society, Free Student Union, Oakland Direct Action Committee, Women for Peace, Stanford Committee for Peace in Vietnam and the DuBois Clubs. Among the speakers on that occasion were Robert P. Kaufman, Frank Wilkinson, Dale Gronemier, Beverly Axelrod, Alan Myerson, Mike Miller and Robert Scheer. Congressman Jeffrey Cohelan had been urgently requested to participate, but he declined. This refusal precipitated a storm of protest and resentment from the groups mentioned above, and they proceeded to make Congressman Cohelan the target for a campaign of intense criticism and abuse. This is normal procedure by radicals when a liberal collaborator finally gets fed up with their tactics and declines to do their bidding. Cohelan's office and residence were picketed, circulars were printed against him, and the furious young people declared they would run their own candidate against him in the coming Congressional elections—and proceeded to do so. Robert Scheer, sponsored by the Vietnam Day Committee and other radical and leftist groups and individuals, filed for Cohelan's seat in the Seventh Congressional District.

This, we point out, is hardly routine procedure simply because a Congressman is unable to attend a rally on Vietnam. But in this instance other elements were plainly involved, and provide the only explanation for the vin-

dictive tirade of oral and written abuse against the Congressman, and for the sit-downs in his office.

After the November parade through Berkeley and Oakland, the Mime Troupe presented a benefit for the VDC in the Berkeley Little Theatre, and it also provided puppets and entertainment for the celebration on the Berkeley campus on the anniversary of the invasion of Sproul Hall—one of the puppets representing President Kerr and another Mario Savio. Naturally, Kerr was made the subject of scorn and ridicule, while Savio was cast in the role of the hero of the student revolution.[84]

The Mime Troupe's show, "Civil Rights in a Cracker Barrel," was not only presented on the Berkeley campus. It was moved to the Davis campus of the University under the auspices of the Vietnam Day Committee there, and presented on the evening of November 7, 1965—a few days more than a month after it had played at Berkeley. Apparently there was no coordination between the campuses, although one faculty member took it upon himself to phone the Chancellor at Davis to warn that the show was unfit for public presentation. The warning was ignored. Tickets were sold at Freeborn Hall on the Davis campus, and the show was staged there. It had been advertised for several days in newspapers both at Davis and Sacramento, and it was the same production that had been presented at Berkeley: the same obscene gestures and four-letter vulgarities, the same theme. Our own investigator was sent to cover the affair, and his report tallied exactly with that of the Berkeley officer.

When the so-called Filthy Speech Movement brought some four-letter vulgarities on the Berkeley campus, and exhibited them on signs, President Kerr professed to be deeply shocked; so much so that he called a press conference and announced his resignation. He has apparently become less sensitive since that time. On this occasion no protests were heard from the President or the Chancellor or the Vice Chancellor. There were no threats of disciplinary action, no protests in the name of minimal decency, no dramatic resignations. Neither were there any suggestions that it might be well to have some semblance of correlation between the campuses, or for someone in the vast and expensive institution to determine

[84] *Daily Californian,* November 22, 1965, and December 3, 1965.

what was unfit to allow on the campus. There was only a profound silence.

With the Mime Troupe's occupancy of University buildings and the presentation of its show, the campus sank to a new low. It is difficult to see just how the administration will seek to escape responsibility for this matter.

Vietnam Day Committee Dance March 25, 1966

The campus activity of the VDC which recently aroused indignation among alumni, University officials, and the general public, was a dance in the men's gymnasium, commonly known as Harmon Gym, on the evening of Friday, March 25, 1966.

The "Campus Vietnam Day Committee" requested use of the facility from 6 p.m. until 2 a.m., and permission was issued by the Chancellor's office on March 25, from 6 p.m. until midnight, but was thereafter altered in accordance with the original application, extending the closing hour until 2 a.m.

Advertised as "hallucinogenic sounds, projections and lights," there were three rock-and-roll bands facing in different directions, and which at times played simultaneously. The noise was so loud that ordinary conversation was impossible, and this was augmented by an electronic device which created random noises and played continuously. The sounds emitted by this device were timed with a pulsating projection of multi-colored lights, and during the dance movies were shown on two screens and on a huge balloon suspended over the bandstand. The movies and the changing lights provided the only illumination, and the pictures were color sequences of liquids spreading across the screen with occasional views of nude torsos of men and women, which were exhibited in a sensual and provocative manner.

According to reports obtained from law-enforcement officers the sweet, acrid odor of marijuana pervaded the area, many of the dancers were obviously intoxicated, and there was evidence of nausea in the lavatories, halls, and other portions of the premises. Young people were, according to one official report, "seen standing against the walls or lying on the floors and steps in a dazed condition,

with glazed eyes consistent with a condition of being under the influence of narcotics. Sexual misconduct was blatant."

The music did not stop at the 2 a.m. deadline, and a University electrician was summoned to cut off the power in order to stop the dance.

The foregoing account is a composite of official reports made by law-enforcement agencies in the East Bay Area together with the official report of the University campus police.

Homosexuality

Daily Californian Articles on Campus Minorities

The November 19, 1965, issue of the student newspaper at Berkeley, the *Daily Californian,* announced a series of articles dealing with campus minority groups: Racial, Sexual, Political and Religious. The series opened with a discussion of the problems faced by the 500 Negro students at Berkeley, and included an interview with Vice Chancellor Earl Cheit.

The article in the issue of November 29th was entitled "Minorities—2700 Homosexuals at Cal." The article was accompanied by a front-page picture of toilet stalls with every alternate door removed. The caption reads: "The campus police have recently removed the door of every other stall in the men's restroom in the basement of the library. Just prior to the door removal, seven persons were arrested for homosexual activity. The theory is that four feet in one stall is suspicious, so resourceful homosexuals drill holes between the stalls . . ."

The article continued: "There are probably 2700 homosexuals at Cal, according to Harold Call, president of the Mattachine Society of San Francisco, a homophile pressure group . . ."

In the paper issued the following day, the front-page installment was headed "Ex-Student Recalls Campus 'Gay Life'." It then printed the revolting experiences of a sex deviate who asserted that members from two fraternities ". . . got homosexuals from bars and would bring them home for everybody . . ." The language used by this student newspaper to describe the unnatural sex acrobatics of the students was nauseating and inexcusable. Under normal circumstances there would have been

quick and decisive discipline. But there was only silence from Kerr, Heyns and Cheit. The student senate voted to criticize the paper for its bad taste; the fraternity representative said he considered the articles "irresponsible and disgusting;" editor Peggy Krause said an apology would be made to the fraternities. But a representative of SLATE said he didn't consider it was proper to criticize the paper. His reasoning was not made clear in the report, but it will be remembered that it was SLATE which tried in vain to exhibit a French film on homosexuality on the campus during the turbulence of 1964.

After the storm of protest that followed the articles published on November 29 and 30, the newspaper modified its language and the subject was thereafter handled with restraint and without offense.

These instances: agitation by SLATE to show the French film on love between homosexuals in prison, the Filthy Speech Movement, some of the contributions to *Spider* (which were dealt with in our 1965 Report), and the Mime Troupe performances on the Berkeley and Davis campuses, are illustrations of the abnormal conditions within the University. They are by no means counteracted by the prolix statements issued almost daily by administration officials that it is just a normal, healthy, average American university. It was not until after the student rebellion that these deluges of filth manifested themselves. We are unable to account for this sequence of events unless it was that the FSM victory engendered an atmosphere of "Anything Goes" on the Berkeley campus.

A situation similar to the *Daily Californian* incident arose at Western Kentucky State College, and the *Oakland Tribune* of February 8, 1966, described how that administration handled the matter.

> "Recently four Western students were suspended from college after a faculty committee found objectionable an article in a monthly mimeographed magazine they published in their off-campus apartment...
>
> Dr. Thompson said (in answer to the students' petition for readmission): 'The basic issue involved in your suspension is, Does Western have the right to set a moral and ethical climate for its student body? It is my judgment that Western not only

has that right, but has the responsibility. Vulgarity is not compatible with the purpose and standards set by Western.'

The President, referring to a visit he had made to the Berkeley campus of the University of California campus last year, also stated: 'I saw there first-hand unbelievable chaos and virtual anarchy which had sprung from irresponsibility. It is our conviction that there should be "no Berkeley in Bowling Green, because of . . . failure to take positive action when the situation warrants it." ' "

THE ELI KATZ CASE

Background

The case of Dr. Eli Katz, former Acting Assistant Professor of German at Berkeley, raises some extremely important questions about the present and future faculty appointments at the University of California. He was born August 10, 1928, in Brooklyn, N.Y. After receiving his B. S. from City College of New York in 1949, he moved to Los Angeles and became a lithographer. Something led him to resume his interest in higher education in September, 1951, when he enrolled as a graduate student at U.C.L.A. In April, 1958, he made application for employment as a Teaching Assistant at U.C.L.A. and served as a T. A. at that institution from September, 1958, until September, 1961. He received an M. A. in June, 1959, and continued work on a doctorate.

In connection with his employment as a T. A. by the University, Katz was required to sign the California loyalty oath. He did so in April, 1958, and with regard to membership in the described subversive organizations within 5 years preceding the oath, he wrote "No exceptions," indicating, of course, that he had not belonged to any such organization during that time.

On April 3, 1959, the Un-American Activities Committee of the House of Representatives published House Report #259. This report discussed Eli Katz among others. Pertinent excerpts:

"Katz is a member of the District Council, Communist Party, Southern District of California. He was a delegate to the Los Angeles County Communist Party convention on January 5–6, 1957, and to the

California State Convention, Communist Party, on January 19–20, 1957."

* * * * * * *

"Katz appeared as a witness before the committee on September 4, 1958, and invoked the fifth amendment in response to questions concerning Communist Party membership and activity."

In September, 1961, Katz was hired as an Assistant Professor of Foreign Languages at San Diego State College. In connection with this employment he again signed the State loyalty oath. He remained there until September, 1962, when he moved to Los Angeles State College. At this institution he was questioned by administrative officers and refused to answer questions concerning Communist Party membership and activities. Rather than answer such questions for the President of L. A. State, Katz resigned in December, 1962, effective as of the end of the academic year.

Berkeley Employment

Katz was hired as an Acting Assistant Professor of German on the Berkeley campus on January 12, 1963. He executed the loyalty oath in connection with this employment on January 11, 1963. This employment was for a non-tenured position and for a specific time period: July 1, 1963, to June 30, 1964. Katz received his Ph.D. from U.C.L.A. in July, 1963, and started teaching on the Berkeley campus in the fall term of that year.

Information as to Katz' background apparently reached the Berkeley campus in the Fall of 1963. Consideration of his promotion to Assistant Professor and his employment as such after the termination of his appointment on June 30, 1964, was then pending. Chancellor Strong talked to the head of the German Department on January 2, 1964, and they agreed the Chancellor should talk to Katz about his background.

Strong Inquiry of Katz

On January 6, 1964, Chancellor Strong met with Katz and questioned him as to whether his continued employment would be in conformity with the University policy

prohibiting employment of Communists and with the affidavit required by the California Loyalty Oath Act. Katz stated that he was not a member of the Communist Party, was not engaged in activities related thereto, and that he had signed the oath in good faith. He further stated that he could not commit himself with regard to his views and activities in the future. Later that same day, Dean William Fretter, head of the University College of Letters and Sciences, pointed out to Chancellor Strong that Katz had previously signed the loyalty oath within 5 years of the reported Communist Party membership and activities of 1957.

It was thus apparent that, if the House Committee Report was correct, Katz was a member of the Communist Party within the time period specifically set forth in the loyalty oath and had therefore sworn falsely in signing that oath on previous occasions.

On January 7, 1964, Chancellor Strong asked Katz to return to his office and explain the discrepancy between his execution of the loyalty oath and his reported Communist Party membership. Katz would give no explanation to Strong and was granted more time to think the matter over.

Decision on Re-Employment

On February 4, 1964, Katz wrote to the Chancellor indicating that his position was the same as that taken by him on January 7, 1964, citing a recent decision of the District Court of Appeals (Mack vs. The State Board of Education), stating that his attorney was studying his case, and suggesting that Counsel for the Regents should do the same. The Chancellor talked the situation over with Prof. Beeler, head of the German Department, and they agreed that Katz should not be employed after June 30, 1964, if he did not submit a satisfactory explanation of this discrepancy.

The Chancellor talked the case over with President Kerr and on February 18, 1964, with the President's concurrence, sent Katz a letter indicating that he would not be offered an appointment at the University when his existing appointment terminated.

On February 19, 1964, Katz wrote to Strong, acknowledged the letter of the previous day, and recounted his previously-taken position that he was not a member of

the Communist Party and that he had signed the Levering oath in good faith. The Katz letter also indicated his conclusion that the decision on appointment had been based on the January conversations and not on academic considerations. This letter was forwarded to President Kerr and a copy of it was then sent from the President's office to that of the General Counsel. There was subsequent correspondence between the General Counsel and the President's office concerning a reply to this letter, and one was finally drafted and sent by the Chancellor on February 28, 1964. The Chancellor's letter basically stated that the University was under no obligation to assign a reason for its refusal to offer a new appointment. The Katz letter of February 19, 1964, was destined to have an extraordinary history.

Faculty Committee

On February 27, 1964, Katz asked the Privilege and Tenure Committee of the Academic Senate to look into his case. The Committee decided to do so, though it might have had some misgivings, as discussed later herein. Chancellor Strong declined to appear personally, but forwarded his records to the Committee. Hearings were conducted on May 5 and 14, 1964, and a report issued on May 19, 1964. Katz was represented by Ernest Besig of the American Civil Liberties Union at these hearings, and told the Committee that he considered the questions put to him in 1958 by the Un-American Activities Committee to be improper and that they would be improper if put to him by anyone. At the hearing Katz related a conversation he had had with Prof. Beeler before his employment at Berkeley, which was, in part:

> Beeler: And you are not a Communist.
> Katz: That is correct.
> Beeler: But you were.
> Katz: I have never answered that question to anybody.

The Committee Report requested that Katz be appointed Assistant Professor of German. One of the Report's conclusions was as follows:

> "A University officer is under obligation (1) to preclude, pursuant to policy of the Regents, ac-

> knowledged by the Academic Senate, employment of a person who is a member of the Communist Party . . . the Chancellor was satisfied in this case that the first specified obligation was met."

On June 4, 1964, the Chancellor responded by letter (concurred in by President Kerr and the General Counsel). The response requested the Committee to reconsider its recommendation and conclusions and pointed out that the above conclusion was not correct. As of June 23, 1964, the Committee refused to reconsider at all, apparently preferring to rest on *its* conclusion as to the Chancellor's satisfaction rather than the Chancellor's own statement to the contrary. In the course of correspondence as to reconsideration, the Committee chairman did state:

> "The Committee has not, and would not, attempt to bar reasonable and fair administrative inquiry felt necessary to resolve doubts about present membership of an officer of instruction in the Communist Party."

President Kerr and the Regents

In April, 1964, a Vice Chancellor at the request of President Kerr, arranged a meeting with an agent of a responsible Federal agency. This meeting took place in Kerr's office and the Federal agent told the President that when Katz signed the loyalty oath as a prerequisite to his employment by the University he could not have done so truthfully and in good faith. The agent presented information indicating that Katz had *not* changed his political views and connections and that he was still connected with subversive organizations.

On April 17, 1964, President Kerr brought the Katz case to the attention of the Board of Regents at a luncheon meeting. The minutes reflect:

> "He advised that a responsible Federal agency has reported that Katz is considered to be a Communist, but the matter of membership in the party is such that it does not permit them to make a public statement concerning the case."

It was also reported to the Regents that Katz was considering a suit against the University through the

A.C.L.U. The President then stated that it might be prudent to appoint Katz as a "lecturer" for a year in order to forestall litigation. A divided Board gave the President and the Chancellor authority to use their best judgment in the matter.

Thereafter Prof. John L. Kelley, then Chairman of the Berkeley Chapter of the American Association of University Professors, after conferring with President Kerr, offered Katz a job as a lecturer if he would refrain from going to the A.C.L.U. On April 30, 1964, Katz wrote to President Kerr, flatly rejecting the offer. On June 30, 1964, Katz' employment terminated and in the fall of 1964 he began teaching at Western Reserve University.

On July 6, 1964, President Kerr referred the Katz case to the statewide University Academic Council in a letter sent by him to the chairman, William Dennes. The latter pointed out to the President that this committee had no jurisdiction and, pursuant to the President's authorization, sent the matter to the Statewide Committee on Privilege and Tenure on July 17, 1964.

On September 24, 1964, the Katz situation was again discussed by the President at a Regents' meeting, the minutes reflecting:

> "He reiterated the administration's view that it has the right to question faculty or prospective faculty in this area, or in any other area within University policy, and that the faculty member is obliged to answer such questions freely and frankly. He added that the Administration continues to hold the position that it will not re-employ Mr. Katz."

Stenographic notes of this meeting quote President Kerr: "We will not hire Katz."

The Status Quo Ante

As of this time, (September 24, 1964), the situation was as follows:

> Katz was not an employee of the University,
>
> The University was under no legal obligation to re-employ him,
>
> The Chancellor had talked to Katz and was not satisfied that he could be hired in view of the University policy against employment of Communists,

An uncontradicted report of the Congress of the United States indicated that Katz signed the loyalty oath falsely in obtaining University employment in 1958,

Katz had refused to discuss with the Chancellor whether or not he swore falsely in his 1958 application for employment at the University,

The Chancellor had talked to Katz and was not satisfied that Katz was in good faith in signing the loyalty oath in 1963 when applying for University employment. A Federal agency had reported to the President that Katz falsely signed the loyalty oath in 1963 in obtaining University employment,

The President had information that Katz was probably a Communist during his 1963–64 employment at the University.

At this point the University was fully aware that the A.C.L.U. was interested in using the Katz case to contest the Regents' rule prohibiting employment of Communists. It was also apparent that the A.C.L.U. suit to force the University to employ Katz would be legally untenable. The law at that time, as was subsequently expressed by the California Supreme Court, fully supports the Regents' position.

In view of the foregoing, the outside observer might reasonably assume that the University should not and would not rehire Dr. Katz. But such was not the case. Without any further interview with him, and in the absence of any new evidence in the University files to indicate that he had in any manner changed his position since September, 1964, the administration now moved to solicit his re-employment.

Moves to Re-Employ

The faculty continued to express concern over the Katz case. On October 15, 1964, the matter was referred by the Academic Senate to its Committee on Academic Freedom; five days thereafter Kerr moved the policy aspects of the case from the Statewide Committee on Privilege and Tenure to the Committee on Academic Freedom—this in accord with his previously expressed intention to the latter committee's chairman, Joseph

Garbarino. Four days later the Academic Senate, by resolution, condemned the administration for its handling of the Katz case. Eventually, through a complex series of parliamentary moves, the matter landed and remained at the Berkeley campus in an atmosphere of liberalism, and was completely insulated away from the Statewide Committee.

The first step which ultimately led to Katz' re-employment had now been taken. On November 11, 1964, Chancellor Strong sent the Department Chairman's recommendation that Katz be advanced to the rank of Assistant Professor to the Berkeley Committee on Budget and Interdepartmental Relations for review. This is a routine procedure in matters of appointment or advance, and deals mainly with academic qualification. Katz was not employed at the time, however, hence reference of his case to this committee was somewhat inconsistent with the President's announcement to the Regents on September 24, 1964, concerning the administration position on re-employment. This reference was one which was agreed upon by President Kerr and Chancellor Strong and it was made clear at the time that it was unrelated to the non-academic considerations as to Katz' potential re-employment. Strong wrote to the chairman of the Budget Committee on November 11, 1964, in part, as follows:

> "I did not transmit this recommendation when first received because of certain matters which I thought I should discuss with Dr. Katz, which remain a matter of continuing concern." And,
>
> "While no further action will be taken pending report on the case of Dr. Katz requested by the Berkeley Division of the Senate from the Committee on Academic Freedom, President Kerr and I are agreed that it would be appropriate to request review by the Budget Committee . . ."

For some reason no copy of this reference letter was kept for the Chancellor's files, or at least there is no copy of this letter in the files now.

The Academic Senate had requested that the University re-employ Katz in its action of November 24, 1964. On December 30, 1964, Chancellor Strong wrote in response (his letter having been agreed upon by President

Kerr). He indicated that the Budget Committee had forwarded Katz's dissertation to an outside expert for evaluation, (this had been requested by the German Department), and:

> "As soon as the academic review is received, it will be given not only my attention but also that of the President."

This was the last contact Chancellor Strong had with the Katz case. Faculty unrest, the FSM, and administration frictions, led to his replacement as Chancellor at the beginning of 1965.

Budget Committee Review

On January 9, 1965, the University received the outside evaluation of Katz' dissertation. The evaluation was entirely negative. It stated that his work was mediocre, represented duplication of effort in the field, contained errors of fact, and that not much in a scholarly way could be expected from Dr. Katz. Subsequently, on January 28, 1965, the Budget Committee submitted a negative recommendation as a result of its completed review.

Once again the casual observer would hardly believe that this man, with overwhelming non-academic disqualifications, and now found after review to be academically inadequate, would be hired by the University.

But Katz had more lives. Somehow the Budget Committee was directed to re-review and after having done so, reversed itself, and submitted a positive recommendation on April 7, 1965.

Meyerson and the Katz Case

The incoming Acting Chancellor Martin Meyerson was immediately faced with faculty discontent and the threatened A.C.L.U. suit with reference to Katz. Initially, Vice Chancellor Lincoln Constance handled the case for the Chancellor's office.

The first indication that Katz was going to be rehired appears in the University files as of March 10, 1965, in the form of a copy of a letter written by Constance to President Kerr and dated March 10, 1965, in the Chancellor's files. The letter indicates approval of the appoint-

ment of Eli Katz as Assistant Professor, effective July 1, 1965. On the same day Constance indicated to other University officials that he had gotten a favorable decision to go ahead with the employment. The Constance letter indicates that the Budget Committee had made a favorable recommendation, but as previously noted they had not issued a report at that time. In fact, President Kerr on March 18, 1965, in a letter to Regent Edwin Pauley indicated that the Budget Committee had not at that point completed its work on a final report.

Whatever may have been the status of decision on March 10, 1965, it was made clear on May 10, 1965. On that date Chancellor Meyerson wrote to President Kerr:

> "In view of the considerations we reviewed and in the absence of additional evidence, I have decided, as we discussed, that a non-tenure offer as an Assistant Professor, Step I, should be made to Eli Katz. . . . In our discussion, you said that because the Regents had considered the matter earlier, they will wish to be advised at this time. I understand that you intend to report on the case and support my decision at the May meeting of the Regents."

The Academic Freedom Committee report was to be acted upon by the Academic Senate on May 10, 1965. Chancellor Meyerson forestalled predictable condemnation of the administration by that body when he announced at their meeting:

> "On the matter which underlies the Academic Freedom Committee's statement today, I have reached a decision which the President supports. Because of the Regents' earlier interest in the case, the President will report it to their May meeting."

This indication of administration backing for Katz was further articulated by Prof. Arthur Ross, an administration spokesman, on May 27, 1965 at another Academic Senate meeting when he reported that the Chancellor was recommending Katz' appointment but that the matter was in abeyance pending consideration by the Regents. As will be seen, there had already been a Regents' meeting between May 10 and May 27, and the net effect of

the administration activity during this time was to needlessly annoy the already heated-up Academic Senate.

By May 10, 1965, then, President Kerr had reversed his September, 1964, position and had decided to solicit the services of Dr. Katz. The new Chancellor had reversed the position of Chancellor Strong and was ready to rehire Katz without any further discussion with him of the subject matter which had raised the question of Katz' good faith. But what about the Regents?

Kerr and the Regents 1965

On May 20 and 21, 1965 the Regents met at Riverside. Minutes of Executive Session on May 20 state:

> "The President reported that Acting Chancellor Meyerson has reviewed the case and that new evidence has been found which would appear to be in Dr. Katz' favor. In light of this development, the Chancellor has expressed his intent to reinstate Dr. Katz, who is now teaching at another University."

At this session Kerr pointed out alternative ways of handling the Katz situation: 1. Leave it entirely to the Chancellor, 2. Have the Regents decide, 3. Have the Regents' committee investigate the case. The minutes reflect as to this:

> "Following further discussion the Committee generally agreed that, because it involves a number of policy considerations and is of such a controversial nature, the matter should be discussed by the full Board."

On that occasion, the transcript indicates that President Kerr stated:

> "There are two documents I have not previously seen. Aside from the facts in the case we have very important policy questions. What these documents show is this, and they were never sent to the President's office. Vice President Bolton had never heard of them. The one I saw today was—Katz wrote a letter in which he said, 'I am not a member of the Communist Party and I signed the Levering Act (California Loyalty Oath Act) in good faith.' The

other document Chancellor Meyerson showed to me recently was a statement by Strong—a memorandum of August 24, 1964, saying that Katz had told him he was not a member of the Communist Party and had signed the Levering Act in good faith."

Subsequent correspondence between Kerr and other University officers makes it clear that the two documents referred to were the Katz letter to Strong of February 19, 1964, and a memorandum of Strong dated August 24, 1964. The President also maintains in the correspondence that he has no memory of these documents.

Whatever may be his position, it is difficult to believe that the President either did not see these documents or he did see them and has no memory of it.

The letter of February 19, 1964 was sent from the Chancellor's office to the President's office within two days of its receipt.

Regular practice in the General Counsel's office is to note those documents forwarded from the President's office which have been initialled by him. A copy of the letter in those files indicates that the letter or a copy had been initialled by the President in February 1964,

This specific letter was introduced as an exhibit at the May 1964 hearing of the Privilege and Tenure Committee. A complete transcript of the hearing was made and was subsequently reviewed and commented on by the President,

On July 6, 1964 the President sent a personal letter to William Dennes asking the Academic Council to review the Katz Case. A number of documents were enclosed. One of the documents was a copy of the February 19, 1964 letter.

Regardless of the final conclusion of the observations or memory of the President, the idea that the Katz assertions, that he was not a Communist on January 6, 1964, and had signed the Levering oath in good faith, were "new evidence" on May 20, 1964, is preposterous.

The position taken by Katz before the Chancellor had always been thoroughly known. More specifically:

A memorandum concerning the legal posture of the Katz case, dated April 14, 1964, was prepared by the General Counsel at the President's request. The memorandum specifically states that Katz told

Chancellor Strong that he is not presently a member of the Communist Party,

On June 18, 1964, Chancellor Strong made a thorough presentation of the Katz situation to the Regents with President Kerr. The minutes reflect that Strong said at the time:

> "Katz's responses to inquiries were to the effect that he is not a member of the party, he is not engaged in activities on behalf of the party, and he signed the Levering oath in good faith."

On April 17, 1964, at the Regents' meeting the President said:

> "He has been willing to say to the Chancellor, 'I am not a member of the Communist Party and meet the Regents' requirement and I signed the Levering oath in good faith', but we have serious doubts."

The "newly discovered document—new evidence" topic did not go beyond May 20, 1965. Before the meeting of the full Board of Regents on May 21, 1965, the files indicate that some of the problems outlined above were brought to the President's attention. The President then changed his tactics. The Katz matter was not brought up at the meeting even though some of the original Privilege and Tenure Committee members had been requested to come to Riverside and had done so. Thus the Regents took no action on Katz at their May 1965 meeting.

Katz to the Campus

On July 21, 1965, President Kerr sent this letter to Vice Chancellor Constance:

> "The Katz case is to be treated as a local campus matter. It should be decided in full accord with all revelent (sic) University polices and procedure. It is recommended that a decision be held until a Chancellor has been appointed for the academic year 1965-66, and he has an opportunity to review the case."

How this came about is interesting. On July 16, 1965, the President talked to the Regents about the Katz case. The minutes indicate:

> "He stated that it was his intention insofar as the University is concerned, to leave the case in the hands of the Berkeley Campus administration for disposition by the Berkeley Chancellor in accordance with the rules and regulations of the University."

A memorandum of Vice Chancellor Constance best illustrates what happened (memorandum July 28, 1965, conference of Kerr, Constance, Meyerson and Heyns):

> "Kerr also said that where [when] he had taken up the Katz case at the July Regents' meeting—presumably in Special Executive Session—he did not think he had had the votes to have the Regents approve referral of the case to the campus for action, but that he was not challenged when he announced that he was going to do so, with the provisions contained in his letter of July 21, 1965."

This memorandum also contains an interesting comment concerning Chancellor-to-be Roger Heyns:

> "Heyns expressed the belief that he would probably come to the same view as the rest of us if he studied the case."

There is one further incident of note in the return of the Katz case to the campus. On July 7, 1965, Marshall Krause, A.C.L.U. attorney, now representing Katz, phoned Chancellor Meyerson and stated that the Katz case *had* been returned to the campus for decision. This was news to Meyerson and he asked Krause as to his source of information. Krause indicated that he was not free to reveal its nature.

In July, then, the Katz case "returned" to the campus. All that remained was for Katz to follow it in person.

Chancellor Heyns

On October 21, 1965, Dean William Fretter of the College of Letters and Science wrote to Eli Katz inviting

him to rejoin the faculty, effective July 1, 1966, at an annual salary of $9,200 (even here, Katz' position was rapidly improving; the offer prepared six months earlier was for $8,100).

On October 21, 1965, Chancellor Heyns advised the Regents' committee on Educational Policy that he intended to rehire Katz. The following day, October 22, at the Regular Session of the Regents the Katz decision was a major topic. The minutes state:

> "President Kerr recalled discussion by the Committee on Educational Policy at the April 1964 meeting concerning what was alleged to be Mr. Katz's current activity in the Communist Party, and advised that Chancellor Heyns, in his review of the matter, had reached a conclusion contrary to that reached by former Chancellor Strong. Chancellor Heyns added that he could find no evidence in the file concerning Mr. Katz's possible membership in the Communist Party and pointed out that Mr. Katz has repeatedly stated that he signed the Levering Oath in good faith."

Chancellor Heyns, as far as his files reflect, never talked to Katz. The questions unanswered in 1964 remained unanswered in 1965. The evidence before him had caused Chancellor Strong to question the honesty and integrity of Dr. Katz, with the concurrence of the President. Now it appears the only permissible evidence was whether or not Katz said he was honest. To Chancellor Heyns, Katz was honest because he said he was honest, also with the concurrence of the President.

However, the most spectacular aspect of Chancellor Heyns' position is that ". . . . he could find no evidence in the file concerning Mr. Katz's *possible* membership in the Communist Party . . .". One may ignore the conclusion of the Congressional Committee, but that is not "no evidence." The report to President Kerr by the Federal agency is manifestly "evidence." Either Chancellor Heyns did not know of the agency's information or he chose to ignore it. The problem is serious either way.

On October 22, 1965, Regent John Canaday made a statement in the Regents' meeting expressing his feeling

that ". . . it is incomprehensible to me that the University would offer him an assistant professorship." This statement was severely critical of the conduct of President Kerr in this matter. Three other Regents joined in the statement of Regent Canaday.

President Kerr responded to the statement of Regent Canaday, as follows:

> "After I have had a chance to read this document I may wish to make a longer statement about it. I would like at this moment to clarify a point. This matter was discussed at the Regents' meeting in Santa Cruz in April 1964. At that time there was this question as to whether or not, to give further time to exploration of the case, Katz might be continued in the University as a Lecturer because it was a complicated case. I did report to the Regents that Chancellor Strong said he had some information which indicated certain possible current activity. This was not my statement based on anything I had first hand, but it was repeating what had been told to me by Chancellor Strong."

Will the service of Chancellor Strong as whipping-boy never end? This disclaimer of "first hand" knowledge is totally incompatible with the fact that the President sought and received personal information from a Federal agency.

On December 18, 1965, local newspapers informed us that Eli Katz had decided to accept the offer and would return to Berkeley.

What Now?

During the Katz episode the office of the General Counsel of the University wrote several legal opinions, consistently pointing out that the University could legally refuse to re-appoint Katz in 1964, and was not legally obligated to rehire him. In 1965 attorney and former Regent Gerald Hagar wrote an extensive legal memorandum which agreed with the opinion of the General Counsel. (For some reason President Kerr chose to withhold this memorandum from the General Counsel.) In any

event, it seems quite clear that the University was under no legal compulsion to rehire Katz. The German Department seems capable of carrying on without his services, and the more troublesome non-academic aspects of faculty appointments are surely not decreased by his re-employment.

What was the compulsion? The conclusion seems inescapable that the pressure of the A.C.L.U., the A.A.U.P., and the more vocal of the local faculty was found sufficiently compelling. Moreover, it appears that President Kerr is the man to whom praise or blame must most logically attach. Surely Eli Katz would not be a faculty member if President Kerr had said no or had presented the full truth to those concerned.

Whatever may be the mechanics of compulsion, the central problem of the Katz case has to do with the Regents' rule prohibiting the employment of Communists and the utility of the Levering oath. During the time Chancellor Strong was in office the University administration took the position in this area that it had the duty to inquire where apparently necessary. President Kerr agreed. The faculty position was effectually the opposite, i.e., the administration has no right to inquire when the applicant signs the oath and says he is not a Communist. The lesson of the Katz case is that the administration has now adopted the "no right to inquire" rule. President Kerr apparently agrees.

If it ever was necessary to provide proof that the "no right to inquire" rule renders the Regents' policy meaningless, the Katz case does so.

It is simply not possible to honestly say that the University has resolved the good faith of Katz in signing the Levering oath at U.C.L.A. in 1958. If he was dishonest then, how can the University allow his 1963 oath to prove itself?

If the information as to Eli Katz, as opposed to his denial of Communist Party membership, is not sufficient to impose a duty of inquiry upon the University, and by such inquiry to satisfy the question of compliance with the Regents' rule, that rule is avoided.

The Katz case itself illustrates avoidance of the Regents' rule by manipulation. It further illustrates a problem in the candor of communications among those respon-

sible for directing the University. Any decision to remove the ban on Communist employment at the University is of great public moment. At least let it be attempted openly.

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CALIFORNIA LEGISLATURE

FOURTEENTH REPORT OF THE SENATE FACTFINDING SUBCOMMITTEE ON UN-AMERICAN ACTIVITIES

1967

MEMBERS OF THE SUBCOMMITTEE

SENATOR HUGH M. BURNS, *Chairman*

SENATOR JOHN F. McCARTHY

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SENATOR RICHARD J. DOLWIG

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Published by the
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OF THE STATE OF CALIFORNIA
LIEUTENANT GOVERNOR ROBERT H. FINCH
President of the Senate

HUGH M. BURNS
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Secretary

FOREWORD

No inference of subversive affiliation or activity should be made solely because the name of a person, organization, or publication, is mentioned in this report.

Previous reports are now out of print, but may be found in the reference rooms of public libraries in California.

LETTER OF TRANSMITTAL

SENATE CHAMBER, STATE CAPITOL
SACRAMENTO, SEPTEMBER 7, 1967

HONORABLE ROBERT H. FINCH
PRESIDENT OF THE SENATE, AND
GENTLEMEN OF THE SENATE

Senate Chamber, Sacramento, California

MR. PRESIDENT AND GENTLEMEN OF THE SENATE: Pursuant to Senate Rules Resolution No. 1, adopted July 9, 1965, under authority of paragraph 12.5 (13) of the Standing Rules of the Senate, the Senate Factfinding Subcommittee on Un-American Activities of the General Research Committee was created and the following Members of the Senate were appointed to said subcommittee by the Senate Committee on Rules: Senators Hugh M. Burns, Chairman, Richard J. Dolwig, John F. McCarthy, H. L. Richardson and Stephen P. Teale.

The committee herewith submits a report of its investigation and findings.

Respectfully submitted,

HUGH M. BURNS, *Chairman*
JOHN F. MCCARTHY
RICHARD J. DOLWIG
H. L. RICHARDSON
STEPHEN P. TEALE

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DELANO GRAPE STRIKE

The purpose of this report is to submit information pertaining to the degree of subversive impact in the Delano grape strikes. Our interest and jurisdiction lie solely with the issue of subversive penetration of organizations involved in the strike and the boycotts which followed, as well as those individuals who have sought to thwart the orderly process of labor employer negotiations and to turn this process into something of their own choosing.

The committee believes that the background of subversive activities in agriculture is necessary in order to understand the present.

Agricultural labor, particularly in the southwest, has been a Communist Party target for more than 35 years. The agribusiness of the large farms in California and Texas has for many years depended on migratory workers. Although many of these workers are far less "migratory" than they were a scant 10 years ago, many of them do not have permanent homes and are dogged by want and low living standards. They present an ideal target for Communist agitation.

In 1929, before the international Communist line was changed to the subtle, undercover approach it employs today, the Communist Party, United States of America had set up the Trade Union Unity League, or TUUL. It was the party's own creature, not a legitimate trade union penetrated and exploited by Communists.[1]

A year later, in 1930, the TUUL invaded the Imperial Valley and established a union known as the Agricultural Workers Industrial League, with headquarters at Brawley. The AWIL injected itself into a strike of vegetable and fruit pickers in Imperial Valley, and violence broke out. Arrests were made and a large group of strikers were put on trial, charged with violations of the Criminal Syndicalism Act. Eight were convicted and sent to San Quentin, thus bringing to an end the Imperial Valley attempt.

But in 1931 the Communist Party launched another effort to organize fruit workers in Vacaville. This time

[1] William Z. Foster, *Toward Soviet America*, Balboa Island, Calif., Elgin Publishers, 1961. pp. 257, 258.

the party included cannery workers, and their union was called the Cannery and Agricultural Workers Industrial Union, or CAWIU. From Vacaville, the CAWIU moved into the Decoto-Hayward area, and thence to the pea pickers at Mountain View and Sunnyvale. There was a peach strike at Merced, Sacramento and Gridley, then a grape strike at Lodi and Fresno. Before this program came to an end, a large segment of California was embroiled in Communist-inspired and Communist-controlled strikes.

Many of the militants who branched out into other fields received their training under such Communist strike leaders as Caroline Decker, Pat Calahan, Pat Chambers, Lillian Monroe and others in these agricultural strikes.[2]

Dorothy Ray, now Dorothy Healey, southern California chairman of the Communist Party, USA, was initiated into the Communist movement by taking part in agricultural workers' strikes throughout California in the 1930's. Her testimony before our committee in 1941 provides a background of Communist activities in the agricultural field at that time.

We are taking the liberty of quoting parts of a resume of her testimony from our 1943 report, now out of print, page 87:

> "In February of 1940 a Field Workers' School, sponsored by UCAPAWA (United Cannery, Agricultural, Packing and Allied Workers of America, CIO) was held at Chino, California, for the purpose of training organizers. Revels Cayton, Negro Communist secretary of the San Francisco local of the Maritime Federation of the Pacific; Amy Schechter, former student at the Lenin School in Moscow in 1939, a writer for *New Masses,* a Communist Magazine, and Carey McWilliams, chief of the California Division of Immigration and Housing, were the instructors at the Field Workers' School."
>
> (Miss Ray was then a Communist Party member and vice president of UCAPAWA.)
>
> Miss Ray's Communist activities carried her into many agricultural unions. She stated that she had worked with independent AFL unions which preceded the United Cannery, Agricultural, Packing and Al-

[2] Page 37, 1943 Report.

lied Workers of America. [She named] "*Campazinos*, a Mexican workers' organization, and the Cannery and Agricultural Workers Union. She was the international representative of UCAPAWA until 1938 or 1939. . . .

She identified a picture of herself taken on the fire escape of the Communist Party headquarters in Oakland on Franklin Street in which she held up two placards, one carrying the slogan 'Join the Communist Party' and the other 'Stop Police Brutality . . . ' "

Carey McWilliams referred to in the quotation is now editor of *The Nation,* a left-leaning magazine.

It is interesting to note that activists in the Delano strike have on numerous occasions harkened back to the lore of the mid-1930's in their propaganda. For instance, a sign carried in the July 9, 1966, Huelga Day parade in San Francisco read: "Grapes of Wrath, 1936–1966."

Grapes of Wrath, a novel by John Steinbeck, is a moving story of the plight of migratory agricultural workers in California, and was hailed by the Communists as justification for their agitational efforts in that field.

The Communists went further by supervising the writing and production of a WPA play "Sun Rises in the West," a play specifically designed to aid organizational efforts of the Communists in the agricultural field.

Research notes used by Steinbeck for *Grapes of Wrath* were conveyed to the WPA theater project writers in Los Angeles from the Simon J. Lubin Society of San Francisco through Communist channels, the writers and director on the WPA theater project being Communist Party members. On page 86 of our 1943 report we stated: "The Simon J. Lubin Society and UCAPAWA are the Communist fronts in California agrarian penetration." [3]

In 1933, the San Joaquin Valley was the locale of a widespread and ruinous cotton strike directed by Communist organizers. Carey McWilliams, editor of *The Nation,* mentioned frequently in these reports, wrote of the strike:

"For some years prior to 1933 the cotton growers of the San Joaquin Valley met at Fresno each fall and fixed

[3] Pages 146–149, 1943 Report for statement of an ex-Communist Party member about writing the WPA Theatre Project play, *Sun Rises in the West,* produced in Los Angeles by the WPA in 1938.

the price of cotton for picking. Previously the price had been 40 cents a hundred pounds; and on September 16th, the growers agreed to establish a price of 60 cents, in contrast to the union (CAWIU) demand of 90 cents a hundred pounds . . .

"So great was the resentment of the cotton pickers in the fall of 1933 that they refused to report for work and instead boycotted the ranches . . . and on October 4, a strike was voted."

Within a short time approximately 18,000 workers were involved and cotton farms extending in a string down the San Joaquin Valley for 114 miles were affected. Four Communist Party organizers led by Pat Chambers directed the activity. On October 12, 1933, a riot occurred at Pixley in which two strikers were killed and another was killed at nearby Arvin. The affair stirred up a veritable hornet's nest of reaction which involved the entire state.[4] McWilliams writes:

"On July 20, 1934, the ax fell on the leaders of the CAWIU. Raiding parties, armed with sawed-off shotguns, handcuffs, blackjacks, rubber hose, billies, riot clubs, gas bombs and accompanied by news reporters and photographers from *The Sacramento Bee,* raided the workers' center in Sacramento and arrested the leaders of the CAWIU, including Caroline Decker and Pat Chambers. Eighteen defendants were placed on trial in Sacramento charged with violation of the Criminal Syndicalism Law, evidence being related to their activities in organizing field labor.

"On April 1, 1935, after one of the longest trials in the history of California courts, eight defendants were convicted and sentenced to prison . . . The arrests and resultant prosecution, which was staged as an anti-Red carnival, crippled and destroyed the Cannery and Agricultural Workers Industrial Union. Their leadership in prison, the workers were momentarily demoralized, and the great wave of strikes subsided."

After the Imperial Valley strike when some 87 arrests were made, and a few lesser strikes which clogged the

[4] McWilliams, Carey, *Factories in the Field,* Boston, Little Brown & Company, 1939, pp. 228, 229.

California courts, the Communists were forced to give up their bridgehead in California agriculture. Needless to say, those violent and bitter struggles of the 1930's left their scars.

For evidence of the Communist Party's continued interest in agricultural workers in the United States, see our accompanying exhibit of a page from the July 3, 1966, issue of *Pravda,* the official organ of the *Komsomol,* youth section of the Communist Party, USSR. We are indebted to the Slavic Department of the University of California at Berkeley for the translation. (See Exhibit I, page 170.)

Background

There are so many background factors involved in this affair that we could never touch upon all of them, but we feel it is important to deal with at least a few of them.

Geography

The area affected by the Delano grape strike involves portions of northern Kern and southern Tulare Counties, about 400 square miles. There are four towns in the so-called strike zone: Delano, Earlimart, Richgrove and McFarland, of which Delano is the largest with a population of 13,250. It is situated in the approximate center of the area and has been the hub of most of the strike activity.

Ethnic Groups

According to the United States census data, the ethnic group distribution within the City of Delano as of 1960 was as follows:

Caucasian	10,160
Filipino	884
Negro	715
Indian	20
Japanese	89
Chinese	29
Other	20
Total	11,913

(According to the State Department of Finance, the population had grown to 13,250 by April 1964.)

These census data do not provide a breakdown of Caucasian groups which is pertinent to this study. Delano

City Manager Louis Shepard provided us with information that approximately 50 percent of the Delano population is Mexican American.

Almost the entire economy of the Delano region is based on agriculture, and there are but few occupations not directly related to wage conditions in the fields—civil service, merchandising, transportation and local industries. The majority of Delano's Mexican Americans are engaged in farm labor, some only part time due to the seasonal nature of the work. Thus, nearly half the community (allowing for children and the aged) works in the fields as farm laborers.

Delano's agricultural force amounts to about 5,000 out of the 67,000 agricultural workers in California. It is basically a nonmigratory force, augmented by migratory workers brought in at the peak of the harvest season.

With the end of the bracero program on December 31, 1964, resident agricultural laborers were placed in a much better bargaining position. Under the bracero program, some 200,000 to 300,000 workers a year entered the United States to do seasonal harvesting. These were augmented by an influx of hundreds of "wetbacks" or illegal immigrants. Texas and California were the principal users of Mexican labor.

Eugene Nelson, a former newspaperman and a participant in civil rights protests in the southern states, lived for a time in Mexico, and his writings were used to encourage the strikers.

Eugene Nelson worked on the inflammatory publication *El Malcriado* (the Protester), and did the translation of its English into Spanish. He wrote:

> "1965, from the beginning, seemed a natural year for something big to develop in the farm labor movement. First, in a surprise development, Congress at the end of 1964 failed to renew the long-standing bracero program, and Secretary of Labor Willard Wirtz at first insisted that agriculture, like other industries, make an effort to recruit American workers . . . Governor Brown finally backed water and allowed several thousand braceros to enter California under a special arrangement guaranteeing

them a wage of $1.40 an hour, and specifying that they could not be used unless similar wages were paid local workers." [5]

The Growers:

The other major group participating in California's $3.6 billion agricultural industry is, of course, the growers. Our focus is upon the wine and table grape industry in the Delano area. There are conflicting accounts concerning the exact number of growers in the area and who were and who were not directly involved in the strike.

According to an antistrike flyer distributed by the Delano Community Citizens League, of the 500 grape growers in the San Joaquin Valley, 50 are located in the Delano area, and of that group 33 were involved in the dispute.

El Malcriado, strike publication, lists 38. *The National Observer* of January 31, 1966, places the number at 31, and *Huelga* places the figure at roughly 60.

The October 1965 edition of the *Produce Reporter-Company Blue Book* lists 48 grape growers and tree fruit growers in the area. The discrepancies may be partially explained if we consider that several of the large ranches are owned by various members of one family and some companies own several ranches.

According to the Delano Historical Society the largest ranch in the area is the DiGiorgio Sierra Vista Ranch and, like many other ranches in the strike zone, it is diversified, producing table grapes, potatoes, cotton and small grain.

Based on information from officials of the concerns involved, the following chart represents some of the pertinent statistics for the 1965 harvest season in the Delano area. We are also including figures on highest and lowest numbers of employees used:

Grower	*Acreage*	*High*	*Low*	*Hourly Wage*
DiGiorgio Corporation	4,263	836	238	$1.69
Schenley Industries	3,350	300	--	2.42
V. B. Zaninovich & Sons	2,378	343	136	1.75
Pandol and Sons	2,000	200	40	1.83
M. Caratan	2,553	242	101	1.75
A. Caratan	1,533	178	110	1.67

[5] Nelson, Eugene, *Huelga,* Delano, Calif., Farm Worker Press, 1966, p. 18.

We have also prepared a chart made up by one of the aforementioned companies on the year-round and seasonal employment figures for his ranch:

Dates	*Activity*	*Percent employed*	*Number*
July 20–Dec. 1	Harvest	100	200
January 1–March	Pruning, tying	35	70
March–April	Post pruning, patchup and odd jobs	15	30
April 1–May 15	Table grape culture	25	50
May 15–July 20	Table grape culture (tip, thin, girdle, etc.)	50	100

It is obvious from the foregoing that seasonal employment has an important bearing on the life of the people and the community. Also, the matter of seasonal employment is of vital concern in the process of collective bargaining but has little bearing on our inquiry. We have included the figures to provide a background for the issues we will discuss.

Leftwing publications such as the *National Guardian* and the book *Huelga* imply that there is a "big business conspiracy" in the financial-political-agricultural combination that runs the gamut from interlocking directorates of corporations to the Governor himself. According to that theory, there exists behind every community problem, *i.e.*, the working conditions of the farm worker, etc., a power elite of economic notables who manipulate the lives and destinies of the entire community. The charge is that the big ranches are "absentee owned" and therefore controlled by distant corporate bodies made up of impersonal boards of directors and their stockholders.

In reality, of the 40 to 50 "big" growers in the Delano area (to say nothing of the 100 or more smaller growers with 100 acres or less) only Schenley Industries and the DiGiorgio Corporation meet the absentee ownership criteria. The other ranches are owned and run by the men who live on them.

An examination of the *Produce Reporter Blue Book* and the Delano telephone directory reveals that of the 48 growers listed in their marketing guide, all but nine show residence listings in the Delano area.

This matter is mentioned because it is a major plank in the prostrike propaganda found in the *National Guard-*

ian, People's World, Malcriado, The Movement (Student Non-Violent Coordinating Committee publication), *Insurgent* (W.E.B. DuBois Club publication), *Spark-Chispa* (Progressive Labor Party publication) and others.

The recurrent theme of the "heartless feudal *patron*" and the "helpless *peon*" of prerevolutionary Mexico is carried to absurdity in *El Malcriado* and some of the other strike literature, especially that printed in Spanish.

It is interesting to note that in the reading matter designed for the Mexican-American audience, *"la causa"* was pictured as a *revolución,* whereas to the Anglo-American liberal and far-left reader, it was presented as a civil rights issue.[6]

Chronology of Events

With the background considerations in mind, we now proceed to an account of the events which have given rise to this report.

1960—May: Larry Itliong began working fulltime to build a union for farm workers in Delano, which soon became the center for the best organized Filipino farm workers in California.

Larry Dulay Itliong was born October 25, 1913, in San Nicolas, Pangasinan, Philippine Islands, and entered United States at Seattle, Washington, on April 6, 1929. He experienced his first strike in lettuce fields in Monroe, Washington, when he was 16. He worked with fishing fleets out of San Pedro and Alaska, and helped organize salmon and sardine cannery workers in the San Pedro-Wilmington area, where he was elected leader of a Filipino community of about 500 workers. At 23 he was already a highly skilled and able organizer.

In Stockton, California, while working as a cab driver he filed a petition for naturalization.[7] He was admitted to citizenship August 14, 1959.[8]

In the mid-1950's, while living in Stockton, he met Dolores Huerta, and they soon became close friends. Quoting an article in *El Malcriado* of October 21, 1966, "They

[6] Files, *El Malcriado.*
[7] Petition No. 8048, Superior Court, San Joaquin County, March 5, 1959.
[8] Official Court records.

had a common goal, and realized that they were both trying to do the same thing to help the workers." Much more will be heard of Dolores Huerta. Itliong is married to Evelyn A. Wrye, having known her since 1946 and married her at San Pedro, California, April 7, 1955.[9]

1962—February: Al Green, an organizer for AFL-CIO in the San Joaquin Valley, and one of the top lieutenants in the AFL-CIO Committee on Political Education (COPE) reactivated the dormant Agricultural Workers Organizing Committee. (AWOC)

After he reactivated AWOC, he worked around the Delano area and became acquainted with Larry Itliong.

1962—September: Cesar Chavez resigned his position as director of the Community Service Organization to devote full time to organizing the predominantly Mexican-American National Farm Workers Association.

Chavez, telling his own story in the July 1966 *Ramparts* Magazine, states, (pages 43, 44):

> "It really started for me 16 years ago (c. 1950) in San Jose, California, when I was working on an apricot farm. We figured he [Fred Ross] was just another social worker . . . and I kept refusing to meet with him. But he was persistent. Finally I got together some of the rough element in San Jose. We were going to teach the *gringo* a little bit of how we felt. There were 30 of us in the house, young guys mostly. I was supposed to give them a signal . . . and then we were going to give him a lot of hell. But he started talking, and the more he talked the more wide eyed I became and the less inclined to give the signal. This fellow was making a lot of sense and I wanted to hear what he had to say.
>
> "His name was Fred Ross and he was an organizer for the Community Service Organization (CSO) which was working with Mexican Americans in the cities. I became immediately involved. . . ."

[9] Official Records.

For more than 10 years Chavez worked with the CSO, during the first part of which he trained in Chicago under the astute tutelage of Saul Alinsky. The latter has named Chavez, Fred Ross, and Dolores Huerta as those in the NFWA who had trained under him in the Industrial Areas Foundation.[10]

To characterize Cesar Chavez in a few sentences is impossible. He has the charismatic qualities of a leader, and the knack of turning situations to his own advantage and to weld factions together in an organized front. His training under Alinsky is undoubtedly responsible for much of this ability.

Saul Alinsky is a recognized expert on training people in the art of civil disobedience. Most of Saul Alinsky's work has been in the field of civil rights activities.

Chavez was born January 31, 1927, in Yuma, Arizona, into a family of five children. Ten years later the family became migrants, doing farmwork along a route from southern Arizona to northern California. His schooling was haphazard and irregular. He married Helen Fabula, daughter of one of Pancho Villa's colonels, and they have (or had in 1965) eight children.

Chavez admitted he left the CSO because it was not forceful enough. Two men, Al Espinosa and Ben Gines, who knew him well stated that he wants to change the whole social system, that he is, in short, a revolutionary. In his article in *Ramparts,* previously cited, Chavez states (page 50): ". . . If this spirit grows within the farm labor movement, one day we can use the force that we have to help correct a lot of things that are wrong with this society."

1963—July: Weeklong conference on Community Development at Asilomar (California), sponsored by the Rosenberg Foundation, at which Saul Alinsky of Industrial Areas Foundation (Chicago) and Fred Ross were discussion leaders. Present, among others, as participants were: Rev. Wayne C. (Chris) Hartmire of the California Migrant Ministry; Edward P. Dutton, Bard McAllister, Art Jenkins, Edwin P. Stephenson and Paul O'Rourke.[11]

[10] Los Angeles *Times*, July 22, 1966; *California Farmer*, March 19, 1966, p. 5.

[11] *Ibid.*, pp. 5, 21, 32; Official Records.

The Rosenberg Foundation provided the original financing for the California Center for Community Development (CCCD) set up in July 1965 in Del Rey, Fresno County, with Gilbert Padilla as secretary. Later it was headed by Edward P. Dutton, mentioned above. Padilla, whose salary was paid by the Rosenberg Foundation, was active in boycott activities for struck Delano products in Los Angeles. He was also one of the officers in NFWA. Chris Hartmire was chairman of the board of CCCD, and also became active in the Delano grape strike.

The Rosenberg Foundation was established in 1936 by the estate of Max Rosenberg, who left $13 million. For a number of years one of the trustees was Louise Bransten (now Berman), a granddaughter of Max Rosenberg, a millionaire in her own right whose long list of Communist connections have been set forth by this committee.[12]

The California Center for Community Development figures prominently in our narrative later.

1963—November 6: Constitution of the National Farm Workers Association (NFWA), was filed with the California Division of Corporations, State of California.

1963—November 19: Farm Workers Credit Union was licensed by the Department of Investment, Division of Corporations, State of California, Sacramento.[13]

The following were named as directors: Julio Hernandez, Richard Chavez, Cesar E. Chavez, Josephine Hernandez and Roger Terronez (now deceased). Richard Chavez is a brother of Cesar Chavez, and will be discussed later in this report.

Ads for the credit union urge farmworkers: "Instead of saving your money on your person, or in a bank, put it in the Farm Workers Credit Union *(El Banco de los Campesinos)* and get all the benefits it offers." [14]

[12] Reports, 1943: pp. 60, 96, 97, 176; 1948: pp. 111, 163, 208, 358; 1949: 456, 484, 547, 688; 1951: 231, 235, 238, 255; 1953: 207, 272; 1961: 164.

[13] Receipt SAC 62795. (From document on file.)

[14] *El Malcriado* Nos. 51 and 52, pages 6 and 30 respectively, and on-the-spot interviews by our agent.

1963—November: Citizens for Farm Labor, Berkeley, California, founded. Purpose of the organization was to study the problems and to help farm labor. Some of the founders were Henry P. Anderson, Ann Draper, Rev. Chris Hartmire, Bard McAllister, Father Thomas McCullough, Dr. Paul O'Rourke and James Murray, attorney.

1964—July: Citizens for Farm Labor, Box 1173, Berkeley, sent an open letter to President Johnson urging him to carry the war on poverty into the agricultural areas of California and the Southwest "characterized by corporate farming and underprivileged, underpaid workers," and urging that Public Law 78, the bracero program, be allowed to expire at the end of 1964.[15] (See Exhibit II, page 174)

In this organization, names of those on the advisory board show a wide divergence of sympathy and background, ranging from those sincerely concerned with the plight of the workers, and those whose participation in the Free Speech Movement and the activities of the Marxist new left organizations is well known. The list appearing on the letterhead is as follows:

Chairman, Henry Anderson
Secretary, Wendy Goepel
Advisory Board: Andres Arellano; Max Awner; George Ballis; Art Brunwasser, attorney; Mal (Malcolm) Burnstein; Hon. Phillip Burton; Rev. Richard Byfield; Cesar Chavez; Ann Draper; Father Ralph Duggan; Prof. Lewis Feuer; Prof. Joseph Fontenrose; Herman Gallegos; Rev. Aron Gilmartin; Hon. Henry Gonzales; Evilio Grillo; Emma Gunterman; Joe Gunterman; Rev. Chris Hartmire; Gerald Hill, attorney; Paul Jacobs; Dorothy Kauffman; William Kauffman; Prof. Van Dusen Kennedy; Prof. Seymour Lipset; Dr. Jack Little; Joan London; Robert Mang; Father Thomas McCullough; Atara Mont; Max Mont; James Murray, attorney; Walter Packard; Katy Peake; Robert Pickus; Jose Rafael Ramos, attorney; Milton Roemer, M.D.; Fred Ross; Hon. Alfred Song; Nancy Swadesh; Norman

[15] From copy of letter mailed about July 1, 1964.

Thomas; Professor Joe Tussman; Fred Van Dyke; Rev. Harold Wilson; Marshall Windmiller; Thomas Winnett; Luis Zarate; Robert Nolan, M.D.

Many of these names are familiar to the readers of our reports, and those of special significance are dealt with elsewhere. There can be no doubt that the Communist Party was eager to penetrate not only the heart of the strike itself, but also any group on its periphery. Official declarations by the Communists themselves amply support this statement. *The New Program of the Communist Party, U.S.A.,* published in February 1966 and acted upon at the June National Convention of the Party, states on page 56:

> "3. The national spotlight on chronic, mass poverty helps to stimulate movement and struggle in the poverty-stricken communities—in the rural slums inhabited by agricultural workers as well as in urban centers. In these communities are large numbers of unorganized workers, many from oppressed minorities—Negroes, people of Mexican or Puerto Rican descent. As these enlist for a real war on poverty, they will demand union organization. . . ." [16]

To point up the keen interest of the Communist Party in the Mexican-American workers, we quote from an article in the September 1965 issue of *Political Affairs,* by Albert J. Lima, chairman of the Communist Party for Northern California. On page 16 he declared:

> "Those affected by poverty make up the main concentration areas of Negro, Mexican-American and white working-class people . . ."

The chairman of Citizens for Farm Labor, Henry Anderson, published a book bearing the imprint of that organization, *A Harvest of Loneliness,* which deals with the bracero program. He has been a frequent speaker at demonstrations on the Berkeley campus, having appeared under the auspices of the Farm Labor Movement, as well as the Student Committee on Agricultural Labor.[17]

[16] Political Affairs Publishers, New York, 1966.
[17] *Daily Californian,* Jan. 8, 1965, and Feb. 17, 1965; *Huelga,* p. viii.

Wendy Goepel, secretary of the organization, went to Delano to work in Cesar Chavez' office for the National Farm Workers Association, and she served as a member of the CFL Advisory Board. Prior to her arrival at Delano, Miss Goepel had worked for Paul O'Rourke. She was also a participant in the activities of the Eighth World Youth Festival at Helsinki in 1962. This Communist-controlled affair has been fully described in previous reports.

Mrs. Ann Draper, wife of Hal Draper of the Berkeley Free Speech Movement, was a frequent visitor to the Delano strike scene, and one of its most active outside workers.[18]

1964—December 2: Student Committee for Agricultural Labor was organized on the Berkeley campus of the University of California with the following officers listed: president, Peter Wiesner; vice-president, Harriet Levi; secretary, Irene Bronston; treasurer, Sue Kennedy; faculty adviser, Lawrence Levine, assistant professor of history. The stated purpose of this organization was "to help improve the working and living conditions of farm labor." A subsequent registration listed Professor John Leggett as faculty adviser, and stated that the objectives included: ". . . aid in the form of donations sent to those agricultural laborers in need of funds, or it may be in assisting with an 'informational boycott' such as the one presently being conducted against Perelli-Minetti products . . ." [19]

1965—March 8: The Student Committee on Agricultural Labor (SCAL) held a meeting on campus at which Ann Draper, Bob Atkins and Geary Herron spoke on "the exploitation of agricultural labor."

1965—September: Eugene Nelson arrived in Delano and took up residence at the headquarters of the National Farm Workers Association, 102 Albany Street.[20] (See Exhibit III., p. 175.)

[18] 1966 supplemental report; official records, Kern County Sheriff's office.

[19] University of California Records.

[20] See Exhibit III, p. 175—pictures of AWOC and NFWA headquarters in Delano.

1965—September 7: A staff meeting was held at NFWA headquarters to discuss a strike which "seemed to be in the air." [21]

1965—September 8: Larry Itliong called strike of Filipino farm workers belonging to the Agricultural Workers Organizing Committee (AWOC), AFL-CIO, at several camps in the vicinity and affecting "over 1,000 workers at 10 ranches." [22]

Eugene Nelson described the strike meetings in the issue of *Huelga* cited above, as follows:

> "The evening of September 7th, as the staff members of the (National) Farm Workers Association met in their tumble-down five-room office at the southeastern corner of Delano, strike seemed to be in the air. We had, in fact, just finished a small strike on the Martin Ranch near Earlimart which had left us itching for more action . . . Martin was estimated to have lost several thousand dollars. Association pickets and staff members gained valuable training in talking to scab workers [on the Martin Ranch] persuading them not to break the strike, and in writing and distributing leaflets attacking scab labor contractors which resulted in keeping two of these contractors from bringing men to the vineyard.
>
> "As we sit in our small conference room discussing plans for a fall membership drive, Eric Schmidt of the Emergency Committee to Aid Farm Workers in Los Angeles chances to drop in with a copy of Jack London's colorful "Definition of a Strikebreaker." The famous author had minced no words in his description of a scab, and Bill Esher, brilliant editor of the association's biweekly newspaper, *El Malcriado,* pounces upon the pungent literary tidbit and decides it must be printed in the paper. . . ."
>
> "Rumors have been flying all day as people have come and gone. AWOC organizers are now in town, we hear. Famous longtime Filipino organizer Larry Itliong and Ben Gines, who organized the Coachella

[21] *Huelga, op. cit. pp.* 19, 20.
[22] *Ibid.*

Valley [lettuce] strike. Meetings of hundreds of Filipinos. Then we hear something concrete: all the workers in a camp on the Lucas and Sons Ranch near Earlimart have quit work and the camp has been closed . . . Next day, September 8th, the rumors are even more abundant—and realities. The strike had taken hold. Over 1,000 workers are out on 10 ranches. Over 20 labor camps are involved. Thirty-six men have just left the camp at the Dispoto Ranch near Richgrove; over a hundred men have stopped work at Caratan—the reports come thick and fast. . . ."

1965—September 14: A staff meeting of the National Farm Workers Association (NFWA) is held to decide whether to take a strike vote among the general membership. Staff members who are present besides Cesar Chavez, who presided, were: Gilbert Padilla, Dolores Huerta, Bill Esher, Norma Redman and Douglas Adair.[23]

It is most interesting to note that among this group of strategists considering the fate of the farmworkers, none were actually farmworkers. Chavez, as we have stated, was an organizer of the Community Service Organization before he established the NFWA. Gilbert Padilla was treasurer of the California Center for Community Development and an officer in the NFWA.

Dolores Huerta, called "Welfare Mary" by Nelson in *Huelga* (p. 22), friend of Larry Itliong of AWOC, as we mentioned previously, mother of seven children, was one of Saul Alinsky's trainees who worked for a time in the CSO at Hanford. She left in 1961 in a dispute over activist policies. This thumbnail sketch hardly does justice to this very active and dynamic woman; we will go into her activities further.

Bill Esher is described by Nelson in *Huelga* (p. 22) as editor of *El Malcriado;* he had been one of the original directors of the Farm Worker Press which published the NFWA strike organ, although his salary was paid by Citizens for Farm Labor.[24]

[23] *Ibid.,* p. 22.

[24] Official records, Kern County Sheriff's office.

In 1964 Esher wrote an article, "Oakland Farm Report" for the *Catholic Worker* (December 1964), of which the leftwing activist Dorothy Day is editor and publisher.

Norma Redman worked for *El Malcriado* and had formerly lived in San Francisco. Douglas Graybill Adair III, son of a Claremont College professor, had been active in the civil rights movement. When he was arrested he gave his occupation as a migrant farm worker.[25]

1965—September 16: (Mexican Independence Day) This was the day set at the September 14 meeting for the general membership to vote on the strike; while there was little time to prepare, there was a certain advantage to taking the vote after a day of celebration on the part of the Mexican-American fieldworkers, most of whom were in a holiday mood.

The Catholic hall, obtained on a last-minute arrangement, was decorated with a portrait of Emiliano Zapata, (revolutionary hero of Mexico) flanked by a huge banner of the NFWA with its stylized Aztec eagle, or thunderbird, to one side and the copy of Jack London's "Definition of a Strikebreaker" on the other. As the hall filled cries of *"Viva la causa!"* were heard. The Mexican national anthem was played and the crowd hushed; several speeches followed with speakers introduced by Gilbert Padilla. Then, when emotion was at a fever pitch, Cesar Chavez rose. He got the crowd with him by asking "Who is here from Jalisco?" (a state in Mexico) and "Who is here from Michoacán?" After one or more answered, there were cries of *"Viva Jalisco!" "Viva Michoacán!" Viva Chihuahua!" "Viva Nuevo León!"* and so on.

When the crowd was going wild Chavez explained *"la causa"* of the strike and asked for a strike vote.

The "vote" was a roar of *"Huelga! Huelga! Huelga!"* (Strike! Strike! Strike!)

Cheers lasted ten minutes with cries of *"Viva Mexico!" "Viva Puerto Rico!" "Viva Cesar Chavez!" "Viva la unión!"* and *"Viva la causa!"*

[25] *Ibid.*

The strike vote had been taken.[26]

1965—September 19: Cesar Chavez, NFWA, and Al Green, organizer of AWOC, met at the Stardust Motel, Delano, to talk over plans for NFWA to cooperate with the AWOC, already out on strike.[27]

1965—September 19: (Later.) At a meeting of strike personnel, the agreed-upon strategy of the strike was discussed. Chavez named a list of his lieutenants to whom pickets and strike personnel must listen. They were: Eugene Nelson; Epifanio Camacho-Baez; Julio Hernandez; Gilbert Padilla; Rev. James Drake; Douglas Graybill Adair III; Rev. David Havens; Patricia Lynn Hansen; Dolores Huerta and Howard Richards.[28]

The Migrant Ministry (of the National Council of Churches) had entered the picture by that time. Drake and Havens were of that group. Camacho-Baez, who lived in McFarland, and Julio Hernandez, Corcoran, were personal friends of Chavez; Patricia Lynn Hansen came from Marin City (California), listing herself as a student and a civil rights worker. Howard Richards, an attorney, formerly in A. L. Wirin's office, Los Angeles, was still active in the American Civil Liberties Union and was a part-time teacher at the University of California, Santa Barbara. He was also on the Advisory Board of Citizens for Farm Labor.

1965—September 20: NFWA pickets appear at every major intersection in Delano led by Cesar Chavez, Wendy Goepel, Dolores Huerta, Rev. James Drake, Rev. David Havens and other members of the Migrant Ministry.[29]

Several incidents follow in which the strikers and their growing list of sympathizers clash with police and trade insults with growers and their representatives. Nearly

[26] *Huelga,* pp. 22–28; official records.
[27] Official records.
[28] Files of Kern County Sheriff's office.
[29] *Ibid.*

1,000 persons picketed the home of Maximo Martinez, a labor contractor, in Delano, apparently thought to be a recruiter of scab labor. Despite the fact that the NFWA "Rules for Pickets" began with the sentence, "This is a totally nonviolent strike," and admonished them not to use obscenities, there was considerable nudging of the rules, if not breaking them outright.[30]

1965—September 25: AWOC crews dump boxes of grapes. Kern County Sheriff's office called in. Present on the strike scene were: Charles Gardinier, picket captain; George Ballis, editor of *Valley Labor Citizen,* Fresno; Terence Cannon, editor of *The Movement,* organ of the California Student Nonviolent Coordinating Committee (SNCC), and Howard Harawitz, SNCC.[31]

It will be seen from the list of those present on the picket line that outside assistance had poured into Delano to help both the NFWA and AWOC. The Migrant Ministry, which we mention chiefly because its members were present at the site of the strike we are studying, had set its goal "to speak to the total life needs of men, women and children who are following the crops, to bring them full commitment to Christ as Lord of their lives . . . and to help them find a contributing place within a stable community . . ."[32]

The foregoing is quoted to illustrate the reasons we are not especially concerned with this group. Many people in California, uninformed about the issues of the Delano strike, have jumped to the conclusion that the Migrant Ministry was one of the subversive elements agitating the grape pickers, but these conclusions are simply not supported by the evidence.

Charles Gardinier, picket captain, was an employee of the California Center for Community Development at Del Rey, the organization established through the Rosenberg Foundation funds, later perpetuated through a grant from the Economic Opportunity Program. We

[30] "Rules for Pickets," obtained NFWA office March 5, 1966. See Exhibit IV, p. 176.

[31] Kern County Sheriff's office records.

[32] Goals listed for period 1960–1970 in statement of purpose, California Migrant Ministry.

quote from a brochure of that organization, copyrighted in 1967:

> "California Self-Help Service Corps, a project of California Center for Community Development, funded as a research and demonstration project under Section 207 of the Economic Opportunity Act to train 40 poor people to be community leaders in the rural areas of California."

With headquarters at Del Rey, this California Self-Help Service Corps is headed by Richard Chavez, brother of Cesar Chavez. Charles Gardinier is a director, and is shown in the brochure standing at a blackboard instructing a class of the National Farm Workers Association on "Votes—Power—Welfare Rights." (See Exhibit V, p. 177.)

The brochure was prepared by George Ballis, editor of the prostrike paper, *The Valley Labor Citizen,* who had been a contributor to the bay area leftist publication, *Liberal Democrat,* edited by Ted Cohen, an admitted Communist.[33] Ballis took over this limping publication in February 1965 and changed its name to *Pacific Scene.* He also did the photography work for Nelson's book, *Huelga,* as well as for the SNCC organ *The Movement.*[34]

Ballis also spent considerable time picketing at the struck ranches, accompanied frequently by Terence Cannon, editor of *The Movement,* which was also violently prostrike. Cannon was a field secretary for SNCC, then the most active and militant of the major civil rights groups, and which also aided in the boycott against Delano grape products.

Howard Harawitz, photographer for *The Movement,* was a delegate to the founding convention of the W. E. B. DuBois Clubs, which the Attorney General of the United States asked to register as a Communist front in the spring of 1963, and was president of the DuBois Club on the Berkeley campus.[35] Harawitz helped Communist Bettina Aptheker and Carol Cohen write a pamphlet on Cuba for the DuBois Clubs, and was photographer for its pub-

[33] *Liberal Democrat,* February 1961; *Political Affairs,* March 1966.
[34] *Pacific Scene,* February 1965; *Huelga* credits to George Ballis, Harvey Richards, Bill Berg and Bill Esher; *The Movement,* Dec. 1965.
[35] 1965 report, p. 53; also official records, University of California.

lication, *Insurgent;* he was involved in the Free Speech Movement at Berkeley with Communist Douglas Wachter, both of whom supplied pictures for the book *Trouble in Berkeley.* He has also been active in the War on Poverty Program, and was an unsuccessful candidate on the radical Community for New Politics platform for election to the Berkeley City Council.

By this time it is apparent that the strike, hardly begun, had drawn a motley group of leftists who were striving to turn it into a civil rights demonstration—even to the "We Shall Overcome" song on the picket lines.[36]

Nelson, writing in the semiofficial chronicle of the strike, *Huelga,* (p. 75), states:

> "In the bustling Filipino Hall, People's Cafe [and] all the places strikers gather, there are passionate discussions now provoked by the appearance of all the civil rights volunteers streaming in to help us. They come from all over, CORE people, SNCC people, ministers, people who have never belonged to an organization but who know a clearcut humanitarian issue when they see it . . .
>
> "The debate continues: Is the strike a movement, or is it a strike? One of the civil rights activists who comes from Pittsburgh, Pennsylvania, Ron Caplan, insists that it is definitely civil rights.
>
> "And Wendy Goepel adds: 'This has been a civil rights issue since the first Negro was brought to America to work in the fields as a slave.' " [Sic.]

1965—October 1: Ann Draper told newsman Frank Winston that SNCC was sending "professional pickets" down (from the San Francisco Bay area). About 100 came on the weekend. John Leggett, a University of California faculty member, brought a carload of student volunteers.[37]

Mrs. Draper, an organizer for the Amalgamated Ladies Garment Workers Union in Alameda County, and member of the Citizens for Farm Labor, worked closely with the strikers at Delano and their supporters at Berkeley. John Leggett had been observed at the strike scene on sev-

[36] Kern County Sheriff's office records.
[37] *Ibid.*

eral occasions, his car was used in the activities, and he had been associated with Mrs. Draper in a Socialist school in the middle forties. This professor, John Leggett, was active in agitating for an abandonment of regular classes on the Berkeley campus, to devote the class time to propaganda against the involvement in Vietnam.[38]

1965—October 5: The Office of Economic Opportunity (OEO) announced that a grant of $267,887 had been made to NFWA for self-help among migrants in three southern counties of San Joaquin Valley.

The exact disposition of this money is somewhat uncertain. Cesar Chavez said he was too busy to administer it, and it lay untouched for over a year. Some or all of it went to the California Self-Help Service Corps, a project of the California Center for Community Development at Del Rey, heretofore mentioned. This movement, headed by Cesar Chavez' brother, was interested in aiding the NFWA and in building "Power to Make Social Change." (See Exhibit V, p. 177.)

The Office of Economic Opportunity phased out of the program in February 1967, Congressman B. F. Sisk of Fresno stating that he vigorously opposed it because the CCCD "openly supports California's striking vineyard workers."

1965—October 8: Sam Kushner, feature writer for the Communist paper, *People's World,* and a functionary in the Communist Party, arrived at Delano with photographer Harvey Richards, also a Communist, to do features on the strike.[39]

Both Kushner and Richards have frequented the strike scene with other reporters for the same paper, Carl Westman and Lawrence Allen Zak. The latter served as chairman of the DuBois Club in Los Angeles County, and was familiarly known as Alan Zak.[40] (See Exhibit VI, p. 178.)

[38] 1966 supplemental report, p. 126; *Daily Californian,* Oct. 11 and Nov. 30, 1965.

[39] *People's World,* Feb. 26, 1965.

[40] For a discussion of his activities in the formation of the DuBois Clubs of America, see our 1965 Report, pp. 37, 40, 41, 42, 47, 52.

1965—October 19: A "cat and mouse" game was played between strikers and the Kern County Sheriff's office. Eugene Nelson informed a deputy that the strikers were going to picket a particular location and that they had arranged TV and newspaper coverage of "action" and would be willing to let a number of their people be arrested. The sheriff's office obliged, but overstepped the arranged bounds somewhat and arrested a few who had not planned to submit. The clergymen present had designated the occasion the "Christian Day of Determination," and a number of them were in the group arrested.[41]

A partial list of those arrested includes the following: Tony Mendez, Earlimart; Barbara Howe, Delano; Patricia Hansen, Marin City; Peter Flint, Sun Valley; Robert Solodow, Delano; Ted Peck, San Anselmo; Ralph Kennedy, Fullerton; Rev. Carl A. Smith, Palo Alto; Esther Uranday, Earlimart; Frances Uranday, Earlimart; Helen Chavez (Mrs. Cesar Chavez), Delano; Ron Caplan, Delano; Manual Rivera, Delano; Vera Oropeza, Delano; Mercy Pena, Delano; Rev. Roger Boyvey, Oakland; Norma Redman, Pasadena; Rev. Frances Geddes, San Francisco; Bob Rita, Delano (unplanned); Henry Uranday, Earlimart; Sibley Cogswell, Mill Valley; Bill Schilling, Stockton; Rev. Don Schilling, Marin City; Rev. Jack Bartlett, Mill Valley; Rev. Roger Ridgway, Hayward; Chris Bergholdt, Yuba City; Rev. Tom Lasswell, Lakeview Terrace; Manuel Uranday, Earlimart; Concha Rodriquez, Delano; Rev. Al Cohen, Fullerton; Lewis Fretz, Citrus Heights; Selden Osborne, San Francisco; Ramon Bustos, Earlimart; Aristo Oropeza, Delano; Josephine Hernandez, Corcoran; Mary Humphrey, Delano; Rev. Chuck McLain, Pasadena, and Ron Eastwood, Hayward.

It will be noticed that a considerable number of these willing arrestees were from various locations around the state, indicating the outside interest in the strike. Also, an examination of the records of some show that they have listed Delano as an address whereas their base of operations was elsewhere. For instance, Mary Humphrey is Mary Frances Humphrey, whose home address was

[41] Files of Kern County Sheriff's office.

1021 West 17th Street, Los Angeles. She had been active in civil rights demonstrations there and was arrested March 10, 1965, for a post office sit-in. The case was later dismissed.[42]

Sibley Blackwood Cogswell, Mill Valley, took part in a Vietnam Day Committee march in Berkeley on November 20, 1965—about a month later than the above arrest.[43]

Selden Leroy Osborne, 1149 Clayton Street, San Francisco, born May 13, 1911, in Bisbee, Arizona, started his leftist career in 1935 when he was a delegate representing the Student League for Industrial Democracy (SLID) at the American Youth Congress in July. In 1962 he was listed as a member of the General Strike for Peace, and the Volkswagen registered to his wife, Lili, was present at the San Francisco City Hall demonstration staged by the Vietnam Day Committee.[44]

Bob Rita, who had not intended to get the publicity of an arrest, has been active from the beginning of the AWOC strike, at which time he was living with Larry Itliong and driving Hector Abeytia's car. When he was arrested he told the arresting officer he was a representative of Professor John Leggett of the University of California, Berkeley. Later, Mrs. Ann Draper brought him to the bay area where he set up the Berkeley Boycott Committee to conduct boycott activities against the products of the struck Delano growers. Also, he became chairman of another organization set up for the same purpose, the Agricultural Labor Support Committee, 568 47th Street, Oakland.[45]

1965—October 19: Cesar Chavez spoke at a noon rally on the steps of Sproul Hall, University of California, Berkeley, the traditional spot for student political activities. With him was Wendy Goepel. He told of the arrest of strikers in Delano, which was only then taking place, and collected money from the audience.

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[42] Los Angeles County Sheriff's office records.

[43] Kern County Sheriff's office records.

[44] *Proceedings AYC*, July 13, 1935; Circular of organization, Nov. 5, 1962; on-spot check of cars at demonstration.

[45] Announcement of Agricultural Labor Support Committee, June 1, 1966, passed out on Berkeley campus.

Thus we see that the strike "movement" was spreading beyond the southern San Joaquin Valley. By November it was on the waterfront in San Francisco where supporters picketed boats loading Delano grapes; in Los Angeles the Emergency Committee to Aid Farm Workers, headed by Frank Paz, collected 16 carloads of food and clothing for the strikers and brought more volunteers in a caravan of cars. Donations poured in.[46] National news services and news magazines were giving coverage to the strike. There were songs and festivities on the strike scene as emotion ran high: "We Shall Overcome" mingled with passionate and tragic Mexican songs—"the movement" had established itself and was carrying the name of Delano across the country, not only in the liberal and labor press, but in metropolitan daily newspapers, on the radio and television news programs and in the large circulation weekly news magazines.

But what of the little city of Delano and the residents who were not caught up in the emotional storm of *Huelga* and "We Shall Overcome"? Files of the Delano *Record* show that they were not liking it. An organization, Citizens Committee for Facts from Delano, was set up and began circulating a newsletter to tell the other side, not necessarily that of the growers, who were suffering financially from the strike, but of the citizens in Delano who resented being overrun by civil rights workers from outside the area. This opposition was slow in awakening, slow in collecting facts and disseminating them. The strikers and their propagandists outdistanced them in the first part of the race, therefore, they were not making themselves heard to any extent during the period we have covered.

So far as the growers were concerned, they were somewhat more articulate and were working as individuals and through the Council of California Growers on the state and national level and through the Delano Community Citizens League locally. DiGiorgio and Schenley, in particular, were getting their side of the picture before the public but not to the degree that the strikers were.

[46] *Huelga, op. cit.*, p. 115.

Returning to our chronology, we find:

1965—October 30: Louise Berman and Barbara Garson were among the visitors at AWOC. They signed the visitors register on page 154. (See Exhibit VII, p. 179.)

Louise Bransten Berman is no stranger to our reports. We had her before our committee in 1941, at which time she admitted that she was the secretary of the Civil Rights Council for Northern California, and used the facilities of the *People's World* to distribute a pamphlet she had written for the Civil Rights Council. To sum up our findings we stated on page 97 of our 1943 report: "The testimony of Louise R. Bransten left no doubt in the minds of your committee as to her Communist Party relationship and of the Communist domination of the so-called Civil Rights Council of Northern California."

We have had no occasion to change our minds. We have dealt with Mrs. Berman, as Louise R. Bransten in our reports of 1948, 1949, 1951, 1953, and 1961.

Barbara Garson, wife of Marvin Garson, was one of the leaders of the Berkeley Free Speech Movement in 1964 and 1965, as was her husband. Both were arrested during the invasion of Sproul Hall. Mrs. Garson has been much in the news recently because of her play, a satire on Macbeth, and titled *MacBird,* which lampoons the Kennedy assassination, and makes the assertion in pseudo-Shakespearean language that President Johnson arranged the murder. FBI Director J. Edgar Hoover has declared that this play is "a satirical piece of trash which maliciously defames the President of our country and insinuates that he murdered his predecessor." This production will have been seen in San Francisco by the time this report is issued, and has been adopted as a text by six universities.[47]

On the Berkeley campus the American Federation of Teachers, both Local 1474 (faculty) and 1570 (teaching assistants) were holding cocktail parties and rallies and collecting funds for the Delano strikers. Food, clothing and toys were also collected to provide for all members of strikers' families at Christmastime. A Ford pickup truck registered to Albert J. Lima, chairman of the Com-

[47] *MacBird,* by Barbara Garson, Grassy Knolls Press, New York, 1966.

munist Party, Northern California Division, was seen at the strike scene. He later testified before the California Senate Factfinding Committee on Agriculture, July 19, 1966, that the vehicle had been driven by his daughter, Margaret, who was taking toys to the strikers' children for Christmas.

Police Captain Al Espinosa of Delano, who is a board member of the Community Service Organization with which Cesar Chavez had been connected before he left to create the NFWA, stated that Chavez and the NFWA were not representative of the Mexican-American community in Delano and that several other groups, such as the Latin-American Citizens Association and the Community Service Organization, were better accepted. He declared:

> "Whereas Cesar Chavez would change the whole [social] structure and have the Mexican 'go it alone' apart from existing systems; LACA, CSO, etc., would use these institutions to break down the barriers that exist between the Mexican-American and the Anglo by self-improvement and increased understanding."

Captain Espinosa contrasted Chavez and Larry Itliong in the following manner:

> "Chavez wants group identification, and he wants the recognition of being the benefactor in bringing this about . . . [whereas] Larry Itliong wants recognition of the union [AWOC]. He wants a 20-cent raise, not social recognition."

He further pointed out that it appeared that Chavez wants *revolution* and that the CSO, from which he resigned, wants *evolution.* (See previous reference to Chavez' own statements in *Ramparts* magazine article.)

1965—November 6: There were three pages of names in the AWOC guest register (176–178), and the events of the day showed that Tim Sullivan, 5599 Corwin Lane, Riverside, brought a truckload of food and clothing, as well as cash. With him were a number of University of California, Riverside, students including Floyd Sweet, CORE, Riverside.

> Later in the day a United Auto Workers caravan arrived from Fremont bringing "food, clothing and fund." (Sic.) Heading the caravan was Pete Soto, UAW Local 1364 delegate to the Alameda Central Labor Council. Other members of the caravan were: Charles Chavez, who arrived two hours ahead of the caravan; Virginia Kiezel, Fremont; Manual Sunshine, San Francisco; Saul Wachter, UAW member with Mrs. Billie Wachter and son Matthew Wachter; Daniel Soto, son of a UAW member, and Tom Eagle.
>
> Also there were Tom Sanders, Socialist Workers Party, Berkeley; Hal Verb, Socialist Workers Party, San Francisco; Professor John Leggett, Berkeley; Gumela Newton, Berkeley; John Maguey, San Francisco, and others. (See Exhibit VIII, pages 180, 181, 182.)

A number of interesting names are brought to light here. In regard to the "fund" brought by the UAW delegation, our chronological entry of December 16 shows that UAW President Walter Reuther pledged $5,000 a month to the strike. Some reports indicate that it was for NFWA, others that it was to be shared by both striking unions.

The names of Saul and Billie Wachter have considerable significance. Both should be familiar to readers of these reports. In 1949, Billie was an instructor in the California Labor School, East Bay Branch, along with such Communist Party members as Holland Roberts, Roscoe Proctor, Celeste Strack and others.[48]

In our 1953 report we gave detailed background information on Saul Wachter (pages 277, 279 and 282), bringing this up to date in the 1961 report,[49] giving details leading up to the incident with his son, Douglas Wachter (now an employee of the University of California), which precipitated the San Francisco City Hall riot at the hearing of the House Committee on Un-American Activities in May 1960. In 1959, Saul, Douglas and Mrs. Billie Wachter were delegates to the Communist Party National Convention in St. Nicholas Arena, New York.[50]

[48] 1949 report, pp. 429–432.
[49] 1961 report, pages 24, 28, 29, 30, 31, 32, and 167.
[50] 1963 report, p. 155.

We do not wish to imply that all members of this UAW caravan, or other persons signing the AWOC register on that day were subversive. The hard fact remains, however, that three seasoned Communists were in Delano at strike headquarters on that date, and the records show that Wachter and his party remained through the following day.[51]

Hal Verb and Tom Sanders, of the Socialist Workers Party, have been active in Trotskyist (SWP) circles for some time, the former having contributed articles to its official publication, *The Militant,* and also to the *Berkeley Barb.*[52]

1965—December 12: The Delano grape strike is now nationwide; SNCC announced a cross-country, all-out boycott of Schenley products, with pickets at stores handling those products in New York, Chicago and other major cities of the country, as well as those throughout California.

While a number of unions have used the boycott as a means to force an employer to accede to their demands, it is regarded as unethical and generally frowned upon by the AFL-CIO leadership. However, the fact that an organization outside the union organized and carried out this boycott is a complete departure from union practices. This was the beginning of the ununionlike actions of NFWA which forced veteran union organizer Ben Gines out of the merged AWOC and NFWA organization.[53]

1965—December 16: Walter Reuther, president of the United Auto Workers Union and vice president of the AFL-CIO, visited Delano and pledged $5,000 a month to NFWA for as long as it takes to win this strike.

Reuther accompanied Chavez and a number of the NFWA activists on a noisy and emotion-fraught parade through Delano, was photographed with Chavez and generally lent his prestige to *"la causa"* of the NFWA.[54]

[51] Kern County Sheriff's records.
[52] *The Militant,* Nov. 22, 1965; *Berkeley Barb,* Oct. 7 and 21, 1966.
[53] Gines interview by committee agent.
[54] Pictures, reports, Kern County Sheriff's office.

1965—December 17: Three pickets protesting the loading of Delano grapes onto a Sweden-bound boat at Pier 37, San Francisco, were arrested for interfering with traffic. Those arrested were James Bennett, Oakland, who gave his profession as writer; David L. Goines, Berkeley, and Professor John C. Leggett, University of California, Berkeley. ILWU longshoremen refused to load the grapes, which were returned.

David L. Goines was one of the group of students at the University of California, Berkeley, whose actions initiated the Free Speech Movement. He was active throughout the life of the FSM and was one of those arrested at the Sproul Hall sit-in on December 3, 1964.[55] As of August, 1966, he was employed by the Berkeley Free Press which prints handbills and literature for left-wing endeavors in the East Bay.

1965—December 27: About 30 longshoremen of the International Longshoremen's & Warehousemen's Union (ILWU), San Francisco, refused to load DiGiorgio grapes on a Norwegian freighter at the Oakland pier. About 20 pickets from Citizens for Farm Labor blocked the loading. Six were arrested.[56]

With respect to Citizens for Farm Labor, we find it working even closer with NFWA and the civil rights groups than at the beginning, although it has been from the first one of the pillars of the movement initiated by Chavez. The January 1966 issue of its publication *Farm Labor* provides the following information on page 3:

> "CFL (Citizens for Farm Labor) and SNCC (Student Nonviolent Coordinating Committee) and the [National] Farm Workers Association, cosponsored a conference in Fresno, December 11–12 [1965], in an effort to work out a system of improved communication between the arms of the farm labor movement . . .
>
> "At least 60 persons, representing 30 different organizations, attended. Among other things, it was decided that a 'clearinghouse' of information be

[55] 1965 report, p. 106.
[56] Police records.

maintained by the Student Committee on Agricultural Workers at Sacramento State College . . ."
Address was given as Student Committee, care of Department of Social Work, Sacramento State College, 6000 J Street, Sacramento.

Also we find a new and expanded executive committee of CFL listed on the last page of the publication. It is:

"EXECUTIVE COMMITTEE:

Henry Anderson, Chairman	Dorothy Kauffman
Arthur Brunwasser,	Joan London
Vice Chairman	Robert Mang
Ann Draper	Wendy Goepel
Bennett Mann	Elizabeth Schorske
Robert Callagy	Kathy Lynch."

Robert Callagy, who stated he was a carpenter, 32, of 1529 Bonita Avenue, Berkeley, was among members of the Committee for Non-Violent Action (West) who were arrested March 23, 1965, at the Oakland Army Terminal for trying to stop a shipment of U.S. war materiel to South Vietnam. He has since been arrested a number of times in other such demonstrations.

There are a number of new names on the CFL Advisory Board, among them: Rev. Booker T. Anderson, Bud Aronson, Hon. Willie Brown, Clive Knowles, Rev. Walter Press, Harry Rasmussen, Attorney Howard Richards, Father Ralph Duggan, Edward Dutton, Michael Harrington, Hon. Henry Gonzales, Leonard Levy, Professor Jack London, Maria Moreno, William O'Rear, Violet Rotan, Gilbert (Bud) Simonson and Donald Vial.

Clive Knowles has been active in Delano, and Howard Richards was mentioned previously as one whom Cesar Chavez asked strikers to "listen to." Donald Vial now heads the Center for Labor Research and Education at the University of California, Berkeley.[57]

As of the 1st of January 1966 there were many organizations, only a few of which were in the union category, which were active in some capacity in the Delano grape

[57] From mailing piece announcement of a symposium on farm problems at Berkeley Little Theatre, October 7–8, 1966.

strike "movement." The list, supplied by the Kern County Sheriff's office from on-the-spot observation, is as follows:

American Friends Service Committee—AFSC
American Federation of Teachers, several locals
American Civil Liberties Union—ACLU
Americans for Democratic Action—ADA
Ban the Bomb
Black Mountain School, Los Gatos
California Democratic Council—CDC
Citizens for Farm Labor (Berkeley and Carmel)
Christian Brothers Teaching Order
College Park Friends, San Jose
Detroit Archdiocesan Council of Catholic Women
East Oakland Parish
Fresno Council for Civic Unity—FCCU
Fresno Democratic Association
Farm Workers Opportunity Project, Oxnard
FWA Rent Fund, Santa Barbara
Human Relations Council of Southern California
Indonesian Community Center, San Francisco
Kern Council for Civic Unity—KCCU
Mexican Civic Committee, Fresno
Math Section, University of California, Berkeley
Mexican-American Leadership Conference, Summerland
Negro Political Action Association, Fresno
Pleasant Hills Human Rights Commission
Revolutionary Confederation of Trade & Farm Workers' Organizations—CROC (Mexico)
San Jose State College Student Representatives
Social Workers Union, Local 535, Los Angeles
Student Friends of the Agricultural Workers
Vietnam Day Committee—VDC
Welfare Rights Organization, Oakland.

1966—January 30: A Volkswagen, 1960, License BTN-395, and registered to Roscoe and Virginia Proctor, 1919 Oregon Street, Berkeley, was observed in Delano near AWOC headquarters.[58]

[58] Kern County Sheriff's office official records.

Roscoe Proctor hardly needs to be introduced. In 1949 he was an instructor in the East Bay Branch of the California Labor School, as we stated previously in this report. At present, to make our story brief, he is a member of the National Committee (of 80 members) of the Communist Party, U.S.A., having been elected to that position at the Communist Party Convention in New York in June 1966. In other words, he, Albert J. (Mickey) Lima, and Dorothy Healey of Los Angeles, are the "ranking" functionaries of the Communist Party in California. All belong to the National Committee.[59]

While the presence of Proctor's car does not conclusively prove he was on the scene, it is reasonable to assume that he, his wife, Virginia McGucken Proctor, or some very close ally was there. In any case, it definitely shows more than passing interest of the Communist Party in the strike at Delano. And on that subject, we have previously mentioned the presence of Sam Kushner and his photographer, Harvey Richards, of the *People's World* on the scene. The fact that an almost constant stream of articles, many of which are bylined by Kushner, in the publication which is the organ of the Communist Party on the West Coast, indicates party interest beyond the point of mere reporting. Kushner was a close associate and confidant of Larry Itliong, first head of AWOC, now the second in command of the merged organization, United Farm Workers Organizing Committee (UFWOC). With respect to Kushner, we quote from a statement of J. Edgar Hoover. The Hall referred to is Gus Hall, general secretary of the U.S.A., and the paragraph deals with an intraparty struggle between Hall on one side and James Tormey, Sam Kushner and Paul Novick on the other. Quote:

> "Hall's control was strengthened by the defeat in the conventional balloting for the national committee of several party veterans who have not been seeing 'eye to eye' with the leadership—veterans such as

[59] Statement by J. Edgar Hoover, FBI, to the Subcommittee to Investigate the Administration of the Internal Security Laws of the Committee on the Judiciary, United States Senate, concerning the 18th National Convention of the Communist Party, U.S.A., June 22–26, 1966, p. 10.

James Tormey (New York), Sam Kushner (California), and Paul Novick, editor of the Morning *Freiheit*. . . ."

Thus we see that with Kushner defeated and the pro-Hall Roscoe Proctor elected to the national committee, they belonged to different factions of the CPUSA at the time Proctor visited Delano. This could mean a tug of war within the Communist Party for influence in the Delano grape strike, or it could mean that warring comrades laid aside their differences to collaborate on the matter of the strike. Whatever the case might have been, it is apparent that this was not just another Volkswagen passing through.

1966—February: Cesar Chavez traveled to Washington, D.C., for a series of meetings with legislators and strike supporters. See Exhibit IX, letter of Harold Barrett, Jr., of the U.S. Department of Labor, Bureau of Apprenticeship and Training, Washington, D.C., dated January 14, 1966, directed to Mrs. Dolores Huerta, then in El Paso, Texas, with respect to airplane tickets—to be paid for by the U.S. Department of Labor—for the use of someone from Delano, California, to Washington, D.C.

1966—February 5: Meeting to support the Delano strike, 8:30 p.m., 846 Solano Avenue, Albany, California, to hear H. L. Mitchell, cofounder of the Southern Tenant Farmers' Union, promotional handbills for which were distributed on University of California, Berkeley, campus by the Student Committee for Agricultural Labor and the Agricultural Labor Support Committee.[60]

1966—February 20: Governor Brown promised he would go to Delano and give the grape strike his first hand attention.

1966—February 21: Herman Gallegos (who in 1964 had been named San Francisco's Outstanding Young Man), announced he was quitting San Francisco's antipoverty council, resigning as chairman of the

[60] From handbill picked up on Berkeley campus.

State Commission on Compensatory Education, but will keep his job as head of a youth opportunities center, and will organize a committee and seek donations to support Delano grape strikers and to make the boycott against Delano growers' products effective.

Herman Gallegos was one of the organizers of Citizens for Farm Labor, and his name appears on the letterhead which we previously mentioned. We mention him on pages 191 and 192 of our 1963 report as having taught a course, "How Fair Employment?" at the 1961 session of the Encampment for Citizenship. Paul Jacobs, who wrote glowingly of Cesar Chavez and the NFWA in the July 1966 *Ramparts* Magazine (p. 39), and who was one of the founders of Citizens for Farm Labor, was also present at the encampment.[61]

1966—February 24: A showing of the motion picture, *Salt of the Earth,* is scheduled by SLATE, to benefit the Delano strikers. To be shown on the University of California, Berkeley, campus.[62]

SLATE, which we have mentioned in our 1961, 1963, 1965 and 1966 reports, has been established as an ultra-radical student organization on the Berkeley campus. The motion picture to be shown was produced in New Mexico in 1953 by Herbert Biberman, and it dealt with a strike by the International Union of Mine, Mill and Smelter Workers. Biberman was identified as a Communist Party member by an ex-Communist, as reported in our first, 1943, report (pp. 124, 129), and later was one of the so-called Hollywood Ten who defied the House Committee on Un-American Activities. The Mine, Mill and Smelter Workers Union was dominated by Communists for a number of years, and the incident depicted in the picture was contorted into Communist propaganda.[63]

At this juncture, the evidence shows that the Delano grape strike was of exceptional interest to the Communist Party and the leftists who supported it. We have not

[61] See discussion of Encampment for Citizenship and its propaganda in 1963 Report, pp. 190–194.

[62] *Support the Strike* handbill; also *People's World,* Feb. 26, 1966.

[63] 1951 Report, p. 267, and our 1963 Report, p. 117 regarding Communist domination of the Mine, Mill and Smelter Workers Union.

said, that the strike was *directed* by Communists, but it was turned into a civil rights "movement," and operated as a cause, not a labor dispute. This view is amply supported by the activity of known members of the Communist Party who were on the scene and aiding the strike almost from its inception; by the favorable accounts that consistently appeared in the Communist press; by the participation in strike demonstrations of such organizations as the DuBois Clubs of America; Students for a Democratic Society; Progressive Labor Party; Vietnam Day Committee, Trotskyite groups and other organizations moved by similar objectives; by the reports of all law enforcement agencies connected with the subject. For example, see Exhibit XX, p. 196.

National Interest

By the end of 1965, prominent citizens of Delano as well as the growers were becoming aroused over what was happening to their community. Church members were alarmed and offended by some of the actions of ministers on behalf of the strike, some of whom had been arrested on the "Christian Day of Determination," mentioned previously.

A group in Stockton operating under the name of FACTS, published a mimeographed bulletin, *Focus,* in January. We cite this *only* as an example to the reaction of the strike.

> "Ministers of the Gospel continue to be the greatest source of 'dupes' for the socialistic and Communistic manipulators. Rushing pellmell into areas even the angels fear to tread, these gullible 'do-gooders' are being constantly used to provide what is considered a 'respectable front' to disturbances far removed from 'social concerns' . . . Buried among these dupes are the hard core fronters . . . and it is these black sheep that lead the white sheep into strange fields . . ."

Some of the statements in the bulletin were much stronger.

Citizens for Facts from Delano, headed by Mrs. Katherine Cesare, continued to be active in the area. They vociferously protested the $267,887 Office of Economic Opportunity grant that had been made to the National

Farm Workers Association, and circulated a letter addressed to Delano citizens urging them to protest the grant to both President Johnson and Sargent Shriver, head of the Office of Economic Opportunity.

The Council of California Growers, in reporting Herman Gallegos' resignation from the San Francisco poverty program to devote more time to the Delano strike, said Gallegos' announcement drew immediate support from the Student Non-Violent Coordinating Committee and "local Presbyterian and Episcopal Churches." The council commented that Gallegos' action indicated the strange turn of events that have converted a labor disturbance into a civil rights demonstration. The council added: "Gallegos' charges of poverty in Delano have been disputed by every welfare agency, public and private, in the area."

A plea was sent by a prominent citizen of Delano to the House Committee on Un-American Activities, urging that body to investigate the alleged subversive influences in the strike, but to date that body has taken no action.

In March 1966, a U.S. Senate subcommittee on migratory labor, headed by Senator Harrison Williams Jr., of New Jersey, held hearings at Sacramento, Visalia and Delano. The other members of this subcommittee were Senators George Murphy of California and Robert F. Kennedy of New York. Testimony was given by growers, labor leaders and churchmen, as well as by law enforcement officers and strike leaders, including Cesar Chavez. The main attention of the subcommittee became centered on the living conditions of migratory farm workers, and the outcome was a recommendation for a cleanup at farm camps.

Both Schenley and DiGiorgio presented *white papers* to the Senate subcommittee, and on pages 1 and 2 of the Schenley document, dated March 16, 1966, we find statements regarding the strike issue:

> "Although both the Agricultural Workers Organizing Committee, herein called 'AWOC' and the National Farm Workers Association, herein called 'NFWA,' each claimed to represent a majority of Schenley workers and requested that Schenley negotiate with each of said unions individually concerning wages and working conditions, Schenley declined . . .

because neither is the bargaining agent for our employees. To the best of our knowledge none of our employees belong to either of said groups . . ."

The paper continues, telling of a visit of representatives of the California State Department of Employment on September 28, 1965, saying that, of 29 individuals who claimed to belong to some labor organization while employed at Schenley, it was found that 23 of them had not been on the payroll at any time during the period in question, and that five had worked on the Delano ranch only from four to six days, and that all had left.

"Although the exact number of grape pickers employed on Schenley's Delano ranch during each of the said 10 days varied, at all times during the 10-day period Schenley had approximately 300 persons employed at the Delano ranch as grape pickers.

"At no time did any of our employees ask us to recognize either of these unions. Schenley has never declined to bargain with any bona fide unions representing our employees. . . ."

Later in this report we shall bring out the change in Schenley's attitude after the NFWA boycott had been in effect for several months.

DiGiorgio approached the matter from a different angle. We quote from their *White Paper* presented to the Senate Migratory Labor Subcommittee:

"At the outset, DiGiorgio Fruit Corporation wishes to state that it, like those outside groups who have joined the Delano picket lines, is concerned with the welfare and dignity of the farmworkers. DiGiorgio recognized long ago that providing good food, good housing and decent wages is in the best interests of both the worker and the company. . . .

"We at DiGiorgio concede the good intentions of religious leaders, civil rights workers, college students and others that have joined with the Farm Workers Association and the Agricultural Workers Organizing Committee in the Delano demonstrations. They are unquestionably men of good will. . . ."

The paper then provides statistics on DiGiorgio's facilities, wages and opportunity programs, and states under the heading of Collective Bargaining:

> "DiGiorgio is not opposed to unionism under conditions which assure the rights of both parties. More than 1,000 DiGiorgio employees are union members and we have had years of harmonious accord with numerous bargaining units."

DiGiorgio held out for elections to determine the bargaining agent for its employees, and there followed a series of elections, interunion squabbles, and arbitration. In the end, however, the merged AWOC-NFWA union won the election, and DiGiorgio began negotiating with it.

We fully realize that the foregoing may appear tangential to our main inquiry, but without including it there would be insufficient background for the reader to understand the events which followed, and which are pertinent. From this point in the developments, the strike takes a bizarre turn.

The Long March

Cesar Chavez has proven himself to be a showman *par excellence* on numerous occasions, but perhaps his greatest production was the Lenten Pilgrimage from Delano to Sacramento which began on St. Patrick's Day, 1966, and ended in a fiesta on Easter Sunday (April 10) at the State Capitol. This affair was replete with pageantry—ragged, barefoot farmworkers, some with small children; black-garbed Catholic priests and nuns; socially aroused Protestant ministers; arrays of brightly colored banners, together with crude, hand-lettered signs, and other lesser banners floated over the heads of the hundred or more marchers.

There was a colorful and well-publicized fiesta at every stop; Mexican Americans in the 25 towns along the way where stops were made had been alerted by advance agents of the march to "make copy." Terry Cannon, field secretary for the Student Nonviolent Coordinating Committee (SNCC) and editor of its West Coast newspaper, *The Movement,* acted as press secretary.

The pilgrimage, which attempted to present a different face to each of the widely divergent groups it sought to

exploit, apparently omitted one for unionism. Ben Gines, who at the time of the march was the vice president of AWOC, said in a sworn statement to our committee that both he and the AFL-CIO organizer, Al Green, disapproved of an amalgamation of unionism and the civil rights movement. "I believe in civil rights," Gines said, "but in the right place."

Cannon proved himself to be a capable press agent *par excellence.* Also, the pilgrimage of poor Mexican-American farmworkers seeking "bread and dignity," to quote Sam Kushner, the high-ranking Communist Party functionary who wrote feature articles for the *People's World,* made excellent copy for newspapers and provided colorful pictures for TV. To use a publicist's phraseology, the pilgrimage made every issue of the metropolitan daily newspapers of California during the entire 25-day period, to say nothing of national weekly news magazines, national TV networks, wire services and special correspondent reports in out-of-state newspapers. *Time* (March 18, 1966, pp. 28, 29) predicted great things for Cesar Chavez; overnight he became a national figure.

By this time Schenley had capitulated, and the second largest grower, DiGiorgio, had offered the NFWA a contract with a no-strike clause to cover the peak of the grape-picking season. This Chavez dramatically spurned, and announced that the boycott of DiGiorgio products, already begun on a nationwide basis by civil rights groups, would continue until he obtained the settlement he wanted.

No opportunity was overlooked, insofar as we can see, to attract the press. There was a pretty nurse along to minister to those who faltered along the way and to bind sore and bleeding feet at each night's caravansary. She was, incidentally, Peggy McGivern, who had walked on the Delano picket lines.

On Good Friday the Stations of the Cross were set up along the way so devout marchers might follow church ritual without leaving the pilgrimage.

Entertainment and refreshments were provided. Skits, dances, songs and guitar music designed to plead the case of the marchers were provided along the way by the recently established *El Teatro Campesino,* or Farm Workers' Theater. This small group of versatile, Spanish-speaking actors and musicians had been trained by Luis

Valdez, former drama student at San Jose State College who had been with the Mime Troupe of San Francisco for several months.[64] (See Exhibit XIX, p. 195.)

Before joining the Mime Troupe, Valdez accompanied a group of students, mostly members of the Maoist Progressive Labor Party, to Cuba in the summer of 1964, where they remained for about a month as guests of the Castro government. Valdez returned with lavish praise for the Communist regime.[65]

Governor Brown chose to spend Easter Sunday at Palm Springs with his family instead of remaining at the Capitol to meet the marchers, which provoked considerable anger and resentment to those who were emotionally identified with the Chavez cause.

Citizens for Facts from Delano, an organization opposing the strike, collected and published on a clipsheet a number of articles dealing with criticism of the priests and ministers in the march on Sacramento. Bakersfield rabbis opposed mixing religion with strike politics, and a Delano Baptist minister at Delano spoke out against professional agitators. He is quoted on the undated clipsheet as follows:

> "This week marks the end of five months of one of the most vicious attacks ever waged upon a community in the State of California.
>
> "An effort to induce 5,000 farm workers in the Delano area to follow a grandiose scheme of a few self-appointed organizers has failed.
>
> "Due to this failure, these same professional agitators are spearheading an array of wild attacks upon a variety of respectable, social-minded citizens and agencies in our community.
>
> "These professional agitators along with college students, members of CORE, SNCC, SCAL (Student Committee on Agricultural Labor), the Berkeley Free Speech Movement, the various groups who are protesting our aid to South Vietnam, and a few misguided clergymen, are attempting to depict

[64] See our 1966 report, pages 86, 129–133.

[65] HUAC Hearings, Sept. 3, 4, 28, 1965, Part V, p. 2089; *Spark—Chispa,* October, 1965; *Ramparts,* July 1966, and *El Malcriado,* No. 28, Jan. 26, 1966.

> Delano as being callous and indifferent towards members of its community . . .
>
> "Delano is truly the 'Little United Nations' of California. We are proud of our community and the harmonious conditions in which the citizens live."

The involvement of the migrant ministry in the Delano grape strike was excoriated in a letter to Bishop Donald H. Tippett, resident bishop of the northern California area of the Methodist Church from the board of the Exeter Methodist Church in Tulare County.

In Santa Monica, ministers and laymen of the Los Angeles Presbytery voted 143–122 against supporting the grape strike, a resolution which had been introduced by Rev. Wayne C. Hartmire, one of the grape strike leaders.

The above is but a small segment of the tide of protest against the Chavez pageant and the involvement of the men of the cloth. We have included it here to indicate that Chavez and his dwindling number of pilgrimage marchers had not totally swept the state into their camp. The march, however, received an enormous amount of publicity. The commercial communications media, which boast of their objectivity and ability to handle complicated subjects in depth, were notoriously shallow and uncritical and seemed unprecedentedly willing to substitute verbiage for perception. And, of course, the march had the all-out support of the Communist press, through the *People's World* and other media they could reach. The widespread publicity given the pilgrimage was by no means a "Communist plot," though the Communists—as attested to by the coverage given it in not only the *People's World,* but also in the pro-Communist publication *National Guardian*—contributed in no small degree.

Leaders from the Teamsters Union were on hand at the Sacramento demonstration, and there were others from the ILWU in San Francisco. Prominent Mexican American leaders, students, civil rights workers, and officeseekers were present to praise Chavez and his organization. Negro author Louis Lomax and James Forman, national secretary of SNCC, were scheduled speakers.

Schenley Industries, which had just been brought to its knees by the NFWA nationwide boycott of its products, furnished free beer and liquor.

Violence and Coercion

The handbook, *Rules for Pickets,* issued to all strike members and volunteers by the National Farm Workers Association, insisted that "This is a totally nonviolent strike." (See Exhibit IV, p. 176.) But despite this laudable gesture, there was a continual flow of strike propaganda accusing the Delano Police Department, the Kern County Sheriff's office, the growers' guards and rival unions of perpetrating brutality and violence in all imaginable forms.

The theme of "police brutality" was hammered on with persistent regularity in the NFWA publication *El Malcriado,* and in the Communist press. In previous reports we have pointed out that the accusation of brutality on the part of law enforcement officers is one of the principal ingredients of the Communist propaganda machine, the effort to break down respect for constituted authority, and to wreck all semblance of disciplinary control (except their own). This is one of the basic tenets of the party. We have also stated in those reports that while the Communists and their controlled organizations are constantly protesting that they never advocate or employ force and violence, they do precisely the opposite.

On April 20, a near riot broke out on DiGiorgio's Vista Ranch, sparked by an altercation between a guard and a picket after some 70 pickets converged on the property and became noisy. A female picket tried to make a citizen's arrest of the guard, whom she claimed had drawn his gun on her. A free-for-all ensued. DiGiorgio disarmed the guard, but the matter was not dropped.

The following month, Attorney Alexander Hoffman, Communist sympathizer, filed a suit in the name of the National Farm Workers Association in Tulare County Superior Court, asking damages of $640,000 against the DiGiorgio Corporation and on behalf of several of its members who claimed to have been assaulted. The members involved were Ida Cousino, Fernando Velasquez; Robert Morino; Epifanio Camacho-Baez, and Mike Kratko. Attorneys for the defendant reported to our

agent on March 10, 1967, that there was an agreement to drop the suit.

Mr. Hoffman has been involved in leftist activities in the bay area for a number of years. In May 1949 he was a member of the Student Progressive Association, which lobbied in Sacramento against the Loyalty Oath Bill; in 1961, following his graduation and admission to the bar, he became a member of the National Lawyers Guild, a cited Communist front; in 1962, he acted as counsel for Carl Granich, son of Isidore Granich, known as Mike Gold, the long-time columnist and feature writer for *The Worker* and other Communist publications.

In July 1962 Hoffman was an attorney on the defense committee for "Everyman II," a project promoted by the Committee for Non-Violent Action to send a small boat into the U.S. nuclear testing zone in the Pacific.[66]

Following the mass arrests of the 800 students who refused to leave Sproul Hall during the Berkeley demonstrations in December 1964, Hoffman was associated with Malcolm Burnstein as an attorney for the defense of the arrestees. He also signed a statement with 53 other "bay area educators and civic leaders" supporting the Berkeley Campus Free Speech Movement. He continued his association with the Berkeley campus community for several months, and in April 1965 was a consultant for the Graduate Coordinating Committee at Berkeley, an FSM member organization, in drafting a "bill of rights" for students. He was assisted in this work by Professor Reginald Zelnik and Marvin Garson, a nonstudent activist and the former FSM executive committee member. He is the husband of Barbara Garson.

Hoffman transferred his legal office to Delano, using the NFWA headquarters at 102 Albany Street, which later became his only business address, although he has apparently retained his Oakland residence at 4416 Harbord Drive.[67]

In our 1965 report, page 148, we summed up Hoffman's record in the following manner: "Alex P. Hoffman had been a speaker for the Labor Youth League, young Communist component of the party, has been acting as an adviser for the FSM, has made no effort to conceal his

[66] CNVA press handout, July 11, 1962.
[67] Official records, Delano Police Department.

Marxist conviction, and was a research assistant at the law center on the Berkeley campus. He recently transferred into the Department of Speech."

It is, we believe, significant that both Cesar Chavez and his union should choose a Communist sympathizer and Communist Party members, respectively, to represent them and counsel them concerning strike matters.

On April 6, 1966, while the pilgrimage to Sacramento was in progress, as well as the beginning of a nationwide boycott against products of Delano grape growers, Schenley Industries announced that after several days of discussion in Los Angeles, conducted by its negotiator, Sidney Korshak, with AFL-CIO national organizing director William Kircher, acting for both AWOC and NFWA, it was recognizing the National Farm Workers Association (NFWA) as the bargaining representative for the striking grape pickers employed on its Delano properties. Cesar Chavez sat in on some of the talks—though supposedly he was marching at the head of his ranks on the 300-mile road to Sacramento.

On April 11, the day after the gigantic Easter festival in Sacramento which climaxed the pilgrimage, NFWA announced a nationwide boycott of S&W Fine Foods, which are products of the struck DiGiorgio Corporation. This was new—the addition of products other than those processed from Delano grapes to the boycott list.

The California State Conciliation Service, headed by Thomas Nicolopulos, set up a meeting in Fresno for April 19 to discuss a union bargain election for DiGiorgio workers in Delano, suggesting that the choice be made among the NFWA, AWOC and the Independent Farm Workers Association, a progrower organization. Cesar Chavez, in spurning the offer, derisively described the Independent Farm Workers as a "company union," and refused to sit in a meeting with its representatives.

The boycott gathered steam when 50 chanting, civil rights-type pickets marched in front of the San Francisco headquarters office of the DiGiorgio Corporation. Spokesmen for the group charged DiGiorgio with brutality and gunplay on its Sierra Vista Ranch.

On the University of California Berkeley campus the Student Committee on Agricultural Labor called for a

"shop-in" demonstration at a Berkeley store to take DiGiorgio's products (S&W Fine Foods, etc.,) from the shelves, piling them into shopping carts, then abandoning the carts in the aisles. This was to be done in retaliation for the alleged brutality at the strike scene. The shop-in was to start on Friday afternoon, May 9, and continue through the following Monday.

Bob Rita, mentioned in connection with the arrests at Delano, and whom Ann Draper had brought to the bay area, announced that the Berkeley Boycott Committee would launch more "shop-ins" and negotiate with the Safeway chain to remove all S&W Fine Foods products from their shelves.

On the Atlantic Seaboard NFWA activist, Sal Gonzales had also established a Philadelphia office to promote the boycott of DiGiorgio products. On March 25, 1966, he addressed a letter to a friend at Delano. The envelope bore the address of Students for a Democratic Society (SDS), Room 199, Memorial Hall, 1785 Cambridge Street, Cambridge, Massachusetts 02138, and was mailed from there. On the letter was Gonzales' address: 295 Dudley Street, Boston, telephone number 427-3699. It reads:

> "Dear --------:
>
> "The National Farm Workers Association will be having a Boston Grape Party in the very near future. For further accurate details, contact the Boston office or the Delano office. The address and phone number where you can reach me is [*sic*] listed above."

Students for a Democratic Society can hardly be classified as a civil rights organization. It is the most radical of the New Left student groups, welcomes Communists as members, and has concentrated on anti-Vietnam war demonstrations and opposition to the draft.[68]

The national secretary of the organization, Paul Booth, was in Delano on March 9, shortly before Gonzales wrote the letter in the SDS Cambridge office.[69] (See picture of him taken in the NFWA office, Exhibit XIV, p. 189.)

[68] 1965 report, pp. 43, 48 and 84; and our 1966 Supplement pp. 63, 82, 86, 111, 112 and 131.

[69] Kern County Sheriff's office records.

The Boston Grape Party was carried out, and boxes of grapes were dumped into Boston harbor.

To further cement the connection between the NFWA and the student idealists on the Berkeley and other college and university campuses, the supporters of NFWA organized a student summer project to begin June 19 and to continue through August, with participating students receiving on-the-spot training by seasoned activists. Organizations promoting the project were:

National Student Association (NSA);
National Student Christian Federation;
Young Christian Students;
Student Committee for Agricultural Labor, Berkeley;
Student Nonviolent Coordinating Committee, California;
Students for a Democratic Society.

Leaflets, such as the one that came into our possession, were passed out on college campuses throughout the state.

In Chicago, friends of the NFWA boycott set up an office at 1300 South Wabash Avenue, and demonstrations against stores carrying S&W products were planned, as well as one against a warehouse stocking the products. The committee was headed by Rev. Douglas M. Still, chairman, and sponsors included church, union and Spanish-speaking leaders, among them Ralph Helstein of the United Packinghouse Workers and Bob Lucas, chairman of CORE in Chicago.

The Teamsters

The Teamsters Union announced on June 1st that it had signed contracts with eight major growers and farm labor contractors in California, the contracts having been executed without fanfare for several weeks. About 2,000 workers were covered in Stanislaus and San Joaquin Counties, and serious consideration was given to moving into the Delano area. Chavez immediately called on the International Longshoremen's and Warehousemen's Union, which, like the Teamsters Union, was independent of the AFL-CIO structure. The two had collaborated on many programs.

There was much scurrying around, some name calling and a confrontation which should be told in the words of feature writer Jerrold K. Footlick, who reported the incident in an article which appeared in the *National Observer,* of December 5, 1966. The article pertained to Paul Hall, "the fasting rising star in the American Labor Movement," who is president of the Seafarers International Union in New York. We quote from the article, page 17:

> "In California last summer, the AFL-CIO was competing with the Teamsters to organize grape pickers. When Teamster muscle became a factor, the Federation (AFL-CIO) sent out an SOS for Paul Hall. A dozen on-the-beach sailors reported from San Francisco. The Seafarers neutralized the Teamsters' strength, which is perhaps one reason that the AFL-CIO won the election."

Thus the Teamsters' threat to Chavez was removed. By that time the organizer for the AFL-CIO in the farm field, Al Green, had become ill and had stepped aside leaving Larry Itliong in charge of AWOC. Itliong followed Cesar Chavez' lead. He had developed a profound admiration for Chavez after the pilgrimage to Sacramento. William Kircher, the national organizing director of AFL-CIO, who had won the Schenley victory for Chavez, had remained in California and was working in the farm labor field.[70]

Before the Teamsters retreated from the farm labor scene, however, they negotiated a contract with A. Perelli-Minetti & Sons, thus earning the undying hatred of the Chavez-Itliong unions. Usually, the loser bows out gracefully and thereafter recognizes the winner as a brother union. But not so in this case: To NFWA the Teamster loomed as a villain of equal proportions with the grower, as shown in Exhibit XVII from the back cover of the March 15, 1967, issue of *El Malcriado.* Thus we have the the anomalous situation of a union (or its supporters) picketing stores which handled the products of a unionized firm, only because the union involved was not their own.

[70] Eyewitness reports to agent.

More on Boycott

A "shop-in" at the Hyde Park Cooperative Store in the Hyde Park District of Chicago, in which S&W Fine Foods were removed from store shelves, resulted in a melee in which "a pregnant woman was knocked to the ground." Police brutality was charged.

This was going on in a number of cities throughout the nation—the activists being the civil rights and New Left groups set into motion by Chavez, or those who were advising him.

We quote from a leaflet distributed on the Berkeley campus by the Student Committee for Agricultural Labor and urging, "Send Money to: NFWA, P.O. Box 1259, Berkeley, California." One side of it is a "Fact Sheet on Farm Labor," and the last paragraph reads in part:

> "IV. THE NEW LEFT AND THE STRIKE
>
> "There are several things about this strike which make it unique in this day of 'establishment' trade unionism. It is a movement rather than an orthodox labor struggle. It contains elements of the civil rights struggle, the fight for economic justice and equality and movements based on class consciousness.
>
> "The strike has vast inherent potential for bringing about social change. . . .
>
> "We as students are in a position to help. We can work effectively as activists in Berkeley . . . The movement must grow. This must be an active summer."

It was.

"Orientation Week" for the Student Summer Project began June 19 at Delano and extended through June 23 for lessons, with two days set aside for festivities. Instructors were:

Eugene Boutilier, who had resigned as associate Minister of the First Congregational Church in Fresno to coordinate the "movement";

Cesar Chavez, who gave instruction on the background and nature of the NFWA;

Luis Valdez of *El Teatro Campesino;*

George Ballis, who had by that time given up his position on the *Valley Labor Citizen;*
Joan London;
Phillip Farnham; Gilbert Padilla, and Wayne C. Hartmire.

The students, about 40 in number, who came from all over the nation, were instructed on techniques of picketing and boycott activities. A number were older students who had taken part in various civil rights demonstrations and who had worked in the organizations. Except for those who remained in Delano to take part in the strike there, the students dispersed to Texas for a melon strike near the Mexican border, to other parts of California for organizing work, and across the nation for boycott activities.

Students paid a $10 orientation fee each, and, although they were given minimum subsistence housing, food and travel expenses, they were also asked to help raise the expense funds.

Governor Edmund G. Brown became impressed by the strength of the Mexican-American bloc, as shown by the convention of the Mexican-American Political Association at its June convention in Fresno, which endorsed Cesar Chavez and the Delano strike, and on June 30 the Governor announced the appointment of Ronald W. Haughton, codirector of the Institute of Labor and Industrial Relations at Wayne State University and the (Ann Arbor) University of Michigan, as an impartial mediator to look into Delano strike matters.

The members of the State Senate Factfinding Committee on Agriculture insisted it was their right, not that of the Governor, to investigate conditions in California agriculture. They announced that they would hold hearings in Delano on July 19, 20 and 21 to air all facts concerning the union election held on the DiGiorgio farms and on other aspects of the Delano grape strike.

The San Francisco Parade

There was a pause in the boycott activities of NFWA to stage a "Huelga Day" parade in San Francisco. Whether by accident or design, Chavez supporters happened on a time when Mayor John Shelley was out of

the city when they pressed for a resolution before the San Francisco City and County Board of Supervisors. At any rate, a resolution was passed and Saturday, July 9, was officially proclaimed "Huelga Day" by Acting Mayor Peter Tamaras. Following is the text:

> "WHEREAS, the people of the City and County of San Francisco, together with all the citizens of the State of California and the entire Country, have noted with approbation and encouragement the gallant efforts of the farm workers in California's San Joaquin Valley and, in particular, the Delano area thereof, to assure themselves of a fair share of economic independence and to carry on the struggle to end rural poverty.
>
> "*Now, therefore be it resolved* that the Board of Supervisors of the City and County of San Francisco do hereby salute and commend the participants in their valiant efforts to assure economic independence for the grape workers, farm help and other striking agricultural employees of Delano in the San Joaquin Valley:
>
> "Do hereby recognize with civic pride the existence and efforts of Teatro Campesino on behalf of the farm workers bringing a unique cultural background redounding to the credit of San Francisco in its noble Mexican-American heritage to aid in the struggle to better the lot of California rural workers; and
>
> "Do hereby respectfully request the Mayor of San Francisco to proclaim July 9, 1966, as Huelga Day in honor of the efforts to achieve economic independence for California's field workers."

Mayor Joseph Hochschild of Delano immediately sent a protest, saying that he was disturbed with the manner in which this resolution had been adopted, and expressing his resentment over the implication that Delano was an area of rural poverty. He urged that the misconceptions be forthwith corrected.

By this time so many well-known leftists had entered the affairs of the strikers, and were wielding so much influence, that they even permeated the preparations for the San Francisco parade. Jack Ybarra, NFWA representative in San Francisco, quit the organization and stated in

a television interview that he did so because the NFWA "is so involved with leftists." [71]

Immediate denials ensued. Parade coordinator Eugene Boutilier called a news conference and acted as official spokesman for the NFWA in denying that anyone had been excluded from the parade. He stressed that "everyone who supports the strike is welcome," and repeated his invitation to the DuBois Clubs to participate. He said that the Vietnam Day Committee was also welcome, but their signs should support the strike cause rather than urging "ban the bomb," and withdrawal from Vietnam.

During the preparation period before the parade, handbills soliciting cash donations to the NFWA Relief Fund were circulated around the bay area. They bore a Concord telephone number, which turned out to be listed to a veteran and able Communist functionary, William Reich. He has long been associated with Grace McDonald on her publication, *The California Farm Reporter*. She has been the angel for many leftist causes, and the presence of Reich in the Delano strike picture removes all doubt about the interest of the Communist Party. He was never repudiated by Chavez or any of the NFWA officials, and was later identified marching along Market Street in the parade.

It was a spectacular parade. Cesar Chavez marched at the head of more than a thousand enthusiastic followers. Among the many banners and slogans proclaiming "Huelga," and "Viva la Causa" was the much-used phrase "Grapes of Wrath—1936–1966."

At the San Francisco Civic Center the "1,500 cheering supporters" of Chavez crowded around to hear him proclaim that the fight of the National Farm Workers Association was also "against the City Council of Delano, and all the people in those small valley towns who react against the farmworkers' right to organize."

Another speaker was Assemblyman John Burton, who denounced a "red-baiting campaign against us who support the National Farm Workers' Association." In our 1965 report (pp. 96, 116 and 153) we commented on Burton's participation in the Berkeley Free Speech Movement demonstrations, and his expressions of support to

[71] KGEO-TV, July 8, 1966, monitored program.

student strikers who walked out of classes at the state university.

Telegrams of support for Chavez and NFWA (which he read) came from Walter Reuther; Stokely Carmichael; Floyd McKissick, national director of CORE; John Raymond, DuBois Clubs of America; U.S. Senator Robert F. Kennedy; Joan Baez; from the American Federation of Teachers, and others.

At the end of July 1966, when union bargaining elections on the DiGiorgio farms became imminent, there was a problem to be resolved in that the NFWA and AWOC had been closely cooperating on many programs, as well as sharing the $5,000 a month from the United Auto Workers. If both union names appeared on the ballot they would be in competition, with workers having to decide between them—there was no other union on the ballot. From many standpoints this was not desirable. Larry Itliong of AWOC had long since hitched his wagon to the Chavez star. Therefore—merger.

On July 27 at a press conference in San Francisco, Cesar Chavez, appearing with Thomas Pitts, Secretary of the AFL-CIO in San Francisco, announced the merger of NFWA and AWOC and the absorption into the AFL-CIO of the merged union, to which was given the name United Farm Workers Organizing Committee, UFWOC. William Kircher, AFL-CIO Director of Organization, who had remained close to the Delano scene since his appearance in California at the Schenley contract negotiations in Los Angeles in the spring, made his appearance and took credit for bringing about the merger.

Thus, the farmworkers on the DiGiorgio properties were to be given the choice of UFWOC or no union in the upcoming election.

Ben Gines, who had been vice president of AWOC, stated to an agent of our committee in sworn testimony that neither the union executive committees nor the membership of either union had been consulted with respect to this merger. He claimed that the arrangement had been worked out exclusively by Chavez, Itliong and Kircher.

It wouldn't take much of a clairvoyant to predict that UFWOC would win the DiGiorgio bargaining election. It did, and the American Arbitration Association media-

tor Sam Kagel, appeared at a televised news conference with Dolores Huerta beside him when he announced the winner of the election.

While we must end our report here, the Delano grape strike is not over, nor is *"La Causa"* to use needy farmworkers to promote leftist aims. A "crusade" similar to the one in Delano has been started in the Rio Grande Valley of Texas by two of the early organizers of the Delano grape strikers—Eugene Nelson and Dolores Huerta—but it is too early to say what direction it will take.

On the credit side, we must note that Mexican-American and Filipino farmworkers in Delano have gotten a union to bargain for them, and we can only trust that the leaders of the AFL-CIO to which it belongs will see that it is kept as a union for the benefit of the members.

The profile on Delano provided in the first section affords most of what we know about the background situation. First, we know that the 400-square-mile "strike zone" is a single economy area; that this is an agricultural economy subject to the uncertainties of weather and market conditions that lie beyond the control of the enterprise; that large amounts of capital are involved and that large numbers of agricultural workers who live in and migrate to the area must rely on seasonal employment. We know also that no fewer than seven different ethnic, racial and nationality stocks live in or near Delano; the Anglo-Saxon, the Mexican and the Filipino being the largest. Interestingly enough, we also find that the Mexican American and Filipino combined represent as large, if not a larger proportion of the total population than the Anglo. Therefore, we must regard this area as unique, and not attempt to apply to it the generalizations applicable to either the state of California or to the United States as a whole. What is true in the upper San Joaquin Valley, for instance, may not be true in Delano.

In simplest form, however, the issues emphasized by the farm workers in Delano have to do with better living conditions, higher wages and collective bargaining. Those are the concern of the United Farm Workers Organizing Committee or any other union which represents these workers. The issues stressed by the growers have to do with the uniqueness of California agriculture, the extent

of the economic risk involved and questions concerning the legitimacy of the unions with which they are to deal.

We must, however, leave the social and economic issues to others. Our concern has been something apart from basic issues, and we are hopeful that this inquiry will help to remove or dispel the abnormal factors which have been imposed upon this strike.

In the appendices we are including statements of two of the original disputants, Jack Pandol, a resident grower, and Dolores Huerta, one of the organizers of the National Farm Workers Association. Also, we are including in an appendix the Plan of Delano, which set in motion the chain of events with which we have dealt in this report.

Publications—Organizations and Individuals

Two veteran union organizers, Ben Gines and Al Green, sought to persuade Cesar Chavez and Larry Itliong that they should stick to traditional unionism, and not desert it for the glamorous path of civil rights, which, they asserted, while of vital importance, was not connected with a labor dispute.

Gines and Green have maintained that in launching the march on Sacramento the die was cast, and traditional unionism was abandoned. They contended the choice of Terence Cannon to promote and publicize the march placed the demonstrations squarely in the camp of the Student Nonviolent Coordinating Committee, and Chavez sent out a letter over his signature urging his followers to read the SNCC publication, *The Movement.* (See Exhibit X, p. 184.)

We have previously mentioned the *National Guardian* as a pro-Communist publication. In our 1963 Report, page 183, we stated:

> "As a medium for spreading the most vicious kind of Commmunist propaganda, this publication ranks with the *People's World* in California and the *Daily Worker* in New York. Sometimes in recent months, it has outstripped both of the others combined in its tirade of Communist propaganda, abuse against our government and our cherished institutions, in an obvious effort to discredit public confidence in our official representatives. . . ."

Silvia Kalitinsky, correspondent for the *National Guardian,* was a volunteer staff worker for the National Farm Workers Association, combining the role of activist and reporter. However, the report on the Sacramento pilgrimage and the almost simultaneous victory over Schenley Industries was reported in the publication by another of its reporters, Robert Randolph, who covered the Berkeley campus during the Free Speech Movement demonstrations. In his article, which appeared in the issue for April 16, 1966, he devotes considerable space to Terry Cannon, SNCC field secretary, who acted as press officer for the march. The publication, *The Movement,* as we have stated, is edited by Terence (Terry) Cannon. Others in the editorial group are George Ballis (also of the militant *Valley Labor Citizen*), Beatrice Glenn, Frank Cieciorka, Bobbi Cieciorka, Brooks Penney, Gerhard Gscheidle and Tim Hall at the San Francisco headquarters office, 449 14th Street. The Los Angeles SNCC office, at 308 Westwood Plaza, was managed by Bob Niemann, Sue Douglas, Beth Hoffman and Martin Van Buren, all of whom are listed on *The Movement* masthead.[72]

The December 1965 issue carries nearly a full-page article on the House Committee on Un-American Activities by Dale Gronemeier, Regional Director of the National Committee to abolish HUAC.

Cesar Chavez is given a full page to tell of the history of NFWA, in which he makes some rather startling statements (next to last paragraph, p. 6):

> "We go beyond what we see as the limits of a labor union and try to get benefits for our members before a contract. We have a combination between a labor union and a community service group. So we help the members with their individual problems and we have the Credit Union and the newspaper [*El Malcriado*] and a cooperative store we were starting befor the strike came. And we have a small burial insurance program for them."

The cooperative was set up later, we might add parenthetically. The incorporation was handled by attorneys Robert Treuhaft and Doris Brin Walker, partners in an

[72] Masthead, April 1966.

Oakland law firm at 1440 Broadway. Both have been identified as Communist Party members. Incorporators were: Cesar Chavez, Bonnie (Mrs. Leroy) Chatfield and Alice Jiminez. $2 million in shares are being sold by the Farm Workers Cooperative at $10 par.

In December, 1965, NFWA and its supporters were boycotting Schenley products and Delano grapes in order to bring producers to terms. The boycott was called almost simultaneously with the strike. Bay area sponsors of the boycott were listed as:

Henry Anderson, Citizens for Farm Labor;
Dr. Thomas N. Burbridge, U.C. Medical Center;
Mary Colwell, Catholic Interracial Council;
Terence Cannon, editor, *The Movement* (SNCC—ed.);
Rev. Thomas Dietrich, Howard Presbyterian Church;
Peter Franck (not further identified—civil liberties attorney—ed.);
Rev. Donald Ganoung, vicar, Episcopal Church, Mission District;
Rev. Francis Geddes, minister, United Church of Christ;
Abel Gonzales, president, Centro Social Obrero;
Robert E. Gonzales, Mexican-American Political Association;
Rev. Wayne C. Hartmire, California Migrant Ministry;
Fanchon Lewis, temporary chairman, Bay Area Aid for Bogalusa (Ala.);
Edward Keating, publisher, *Ramparts*;
Ken McEldowney, regional staff, Students for a Democratic Society;
Mike Miller, field secretary, Student Nonviolent Coordinating Committee (SNCC);
Ignacio T. Rodriguez, recording secretary, Centro Social Obrero;
Mary E. Salazar, Glide Foundation;
Blair Stapp, Artists Alliance for Human Rights;
Nancy Swadesh (not further identified—Americans for Democratic Action—ed.);
Wilfred Ussery, national first vice president, CORE;
Ed Dutton, director, California Center for Community Development;

Rev. Robert Olmstead, Shattuck Avenue (Berkeley) Methodist Church;
Bay Area Friends of SNCC;
Executive committee, Mississippi Freedom Democratic Party, Lawrence Guyot, chairman;
Rev. Herman Farlow, Faith Presbyterian Church;
Rev. Les Larsen, West Oakland Parish;
Professor Fred Stripp, University of California, Berkeley;
Professor John Leggett, University of California, Berkeley.[73]

Spartacist

The publication *Spartacist West* was much concerned with the Delano grape strike. It is the organ of the East Bay Spartacist Committee, which is the West Coast branch of the Spartacist League. The League's publication, *Spartacist,* declares on its masthead that the organization is comprised of ". . . supporters of the Revolutionary Tendency, expelled from the Socialist Workers Party." [74] This would place it at the very extreme of the radical Communist movement. The followers of Leon Trotsky formed the Socialist Workers Party, which we have discussed in previous reports. Briefly, these members split away from the old Communist Party that remained loyal to Stalin after Trotsky was expelled from that party and from the Soviet Union. It remained hard-core militant, never relenting from the theory of permanent world revolution, as opposed to Stalin's concept of first building up a powerful organization in Russia. A more militant stand is difficult to conceive. We have here reproduced the front cover and center spread of *Spartacist West,* Exhibit XI, pp. 185, 186.

The Militant

This is the official organ of the "orthodox" Trotskyist group, the Socialist Workers Party. It is published at 873 Broadway, New York. Joseph Hansen is the editor and Mrs. Karolyn Kerry is business manager. She and her husband, Tom Kerry, were once active in California. Hal

[73] *The Movement,* Dec. 1965, p. 3.
[74] *Spartacist,* Nov.–Dec. 1965.

Verb, who was listed in the AWOC guest register for November 6, 1965, is a contributor. The issue of November 22, 1965, carried his story, "California Grape Pickers Strike," and was datelined "Delano, November 6."

The Catholic Worker

The *Catholic Worker,* 175 Chrystie Street, New York, organ of the Catholic Worker Movement and edited by Dorothy Day, carried several articles on the Delano grape strike, one in the December 1966 issue by Bill Esher, strike activist and propagandist to whom we have already referred. His article, "New Front in Delano," gave much credit to Dolores Huerta, second in command of NFWA, mother of seven, lobbyist, strike leader and intellectual.

Dorothy Day, one-time friend of the chairman of the Communist Party, U.S.A., the late Elizabeth Gurley Flynn, has followed the Marxist line meticulously in this supposedly religious publication. About the only thing Catholic about it is the name. Miss Day has been an outspoken supporter of Fidel Castro, and connected with numerous Communist fronts and causes.[75]

The strongest link between the Delano strike and the *Catholic Worker* and the Catholic Worker Movement is through Mrs. Dorothy Kauffman, who supports both. She is a member of the Citizens for Farm Labor Advisory Board, and was at AWOC headquarters on December 11, 1965.[76]

Insurgent

This is the organ of the W. E. B. DuBois Clubs of America, which was published in the Chicago headquarters of the clubs. It was by no means laggard in printing a story favorable to the grape strike. The January–February, 1966, issue carried an article, "Delano: The General Strike in the Grapes," by Al Howard, with photographs by Howard Harawitz. The article stated that the Welfare Rights Organization had sent people to Delano to "teach local residents their rights under welfare laws."

[75] HUAC *Hearings on Violations of State Department Travel Regulations to Cuba,* May 6, 7, 23, 1963, pp. 314, 319.

[76] CFL Exhibit II, p. 174; also AWOC register.

One of these "people" was the photographer, Howard Harawitz, whose wife, Elly, was principal founder of the Welfare Rights Organization.

The May–June 1966 issue of *Insurgent* ran an entire section on the Delano strike, the first, pages 16 and 17, on the pilgrimage, and another, pages 18 and 19, on "Profile of a Striker."

We quote from the first article, "Delano: Bread and Justice":

> "The strikers in the vineyards of Delano are writing a chapter in the second American Revolution, that revolution which will achieve true democracy for all our people. . . ."

And later:

> "The strikers called the march a Pilgrimage of Penance, a witness to the past sufferings of the Mexican-American workers and to the sufferings to come in the long fight for justice in the valley. . . ."

It also quotes the Plan of Delano, and it rings in a number of *"Vivas,"* concluding with *"Viva Cesar Chavez!"*

DuBois Clubs

It is worthy of noting that a number of members of the DuBois Clubs were active at Delano, especially Donna Sue Haber, who gave her address as 1919 Oregon Street, Berkeley, which is the same address as that of Communist Party National Committee member, Roscoe Proctor. We referred to her in our 1965 report, page 46, as one of the founders of the DuBois Clubs of America. She was office manager at the Delano headquarters of NFWA, where Wendy Goepel was secretary.

Stokely Carmichael, founder of the militant Black Panther Party and later a member of the National Executive Committee of the Student Non-Violent Coordinating Committee (SNCC), came to Delano with a group of SNCC organizers on February 9, 1966, to meet with Chavez and discuss ways whereby SNCC might participate most effectively in the strike. He was photo-

graphed in the NFWA office with Miss Haber. (Exhibit XII, p. 187.)

Carmichael later became national chairman of SNCC, and his statements of bitter hatred and threats of violence against white people have driven many white liberals out of his organization.

Spark—Chispa

This publication is the West Coast organ of the Progressive Labor Party, the pro-Maoist Communist group that split away from the CPUSA during the Sino-Soviet split.[77] As stated in our 1965 report: "It is already apparent that the new Progressive Labor Party is not only the most militant and aggressive Communist organization in this country, but that it is drawing younger members of the old CPUSA out of the ranks and attracting large numbers of radical youth from all parts of the country . . ."

The presence of this organization among the supporters of the Delano strike is perhaps even more ominous than the presence of the "orthodox" Communists.

In the October 1965 issue of this publication is a front-page headlined article, "Guerrilla War in Fields—Farm Workers Strike for Union, Wages," by Luis Valdez, whom we mentioned earlier as head of the Farm Workers Theater. It tells the story from the viewpoint of the militant left, analyzing the beginnings of the strike.

The issue for January–February 1967 carries an article on current boycott actions by the union. Editors listed in this number are: Chris Raisner for *Spark;* Santiago Coronel for *Chispa;* Margaret Driggs, circulation, and Claude Beagerie, photography. Mrs. Driggs had formerly been listed on the masthead of the *National Guardian,* and left it for the more militant publication of the Maoist-oriented Progressive Labor Party.[78]

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[77] 1965 report, pp. 166–168. Headquarters in the bay area was located at 3382 18th Street, San Francisco, as of October, 1965. Thereafter it has been listed at 2929 16th Street. It receives its Berkeley mail at Postoffice Box 73, Station A, Berkeley.

[78] *Spark—Chispa,* Jan.–Feb. 1967.

Ramparts

We have quoted from an autobiographical article by Cesar Chavez in the July 1966 issue of this publication. As a matter of fact, an entire section, pages 37–50, entitled "*¡Huelga!* Tales of the Delano Revolution," ran in this issue. The first article was written by Paul Jacobs, and praised Chavez highly; the next, pages 40–43, is by Luis Valdez, whom we met as author of an article in the Progressive Labor Party publication. His article is entitled, "The Tale of the *Raza,*" and explains that *raza* means race. "The race is the Mexican people," and goes on to say that he is a Mexican. He states that Cesar Chavez "is our first *Mexican-American* leader," as opposed to Mexican leaders such as Benito Juárez and leaders of the 1910 Revolution.

He says about the march to Sacramento (p. 42): "Our pilgrimage is the *match* that will light our cause for all farmworkers to see what is happening here, so that they may do as we have done. *Viva la causa! Viva la huelga!*"

Valdez continues in a vein uncomplimentary to Delano: ". . . After years of isolation in the *barrios* (outlying towns) of Great Valley slum towns like Delano . . . the Mexican-American farmworker is developing his own ideas about living in the United States . . ." And he concludes: "Listen to these people, and you will hear the first murmurings of revolution."

It is impossible to discuss here in any detail the expensively produced "slick" monthly magazine, *Ramparts*, published in San Francisco. The editor and publisher is Warren Hinkle III, and the managing editor is Robert Scheer. Among the contributing editors are Paul Krassner, editor of *The Realist;*[79] Jessica Mitford, wife of attorney Robert Treuhaft and an identified Communist.

People Involved

Let us recapitulate and introduce yet more recorded names of outsiders, with comment supported by official records from the Kern County Sheriff's office, Delano Police Department, and other official records.

Douglas Graybill Adair, III—Claremont.

[79] See our 1966 report, p. 97.

Mike Adams—Berkeley, identified by photograph in Delano.

Richard Albert—Oakland-Berkeley, Oct. 2, 1965.

Hursel Alexander—Los Angeles. An identified Communist.[80]

Steve Allen—Los Angeles area, April 1966, pictured with Cesar Chavez and Luis Valdez. (Exhibit XIII, p. 188.)

Henry P. Anderson—Berkeley. His car used as strike vehicle on Nov. 27, 1965.

Lee Rex Antrim—Concord. Lived at AWOC headquarters.

Bob Atkins—Berkeley. Visited AWOC Oct. 23, 1965.

George Ballis—bay area and Fresno, heretofore mentioned.

Rev. Jack Bartlett—Mill Valley, arrested Oct. 19, 1965.

Duane Belcher—teacher, Bakersfield.

Mark W. Benecke—Berkeley. His car used as a strike vehicle.

Christian Dudley Bergholdt—Yuba City, arrested Oct. 19, 1965.

Louise Berman—heretofore mentioned. (See Exhibit VII, p. 179.)

Paul Booth—Chicago. Past president and Secretary, Students for a Democratic Society, photographed at NFWA headquarters on March 10, 1966.

Rev. Eugene L. Boutilier—Fresno, Oct. 11, 1965.

Gary Bowman—San Francisco, set up clinic for strikers.[81]

David Boyden—Berkeley, Nov. 21, 1965; car used as a strike vehicle.

Richard Boyden—Berkeley. Chairman, Student Committee on Agricultural Labor, Berkeley campus, 1966.

Terence (Terry) Cannon—SNCC; *The Movement,* heretofore mentioned.

Ronald David Caplan—Pittsburgh, Pa., arrested Oct. 19, 1965.

Stokely Carmichael—SNCC, heretofore mentioned.

Bonnie & Leroy Chatfield—Bakersfield; active in strike.

Charles Chavez—Fremont, heretofore mentioned. (See Exhibit VIII, pp. 180–182.)

[80] See 1949 report, pp. 429, 432; 1963 report, pp. 162, 253; *People's World,* Feb. 26, 1966.

[81] *Huelga,* p. 115.

Cieciorka, Frank and Bobbi—San Francisco; with Du-Bois Club publication, *Insurgent*.
Robert Patrick Coffman—Mill Valley.
Sibley Blackwood Cogswell—Mill Valley. Arrested Oct. 19, 1965.
Albert C. Cohen—Fullerton. Arrested Oct. 19, 1965.
Simon O. Connelly—State Fair Employment Practices Division, Fresno, on state business; photographed talking to Sam Kushner in car. (See Exhibit XV, p. 190.)
Ida Cousino, strike activist, heretofore mentioned.
John F. DeLury—San Francisco.
Ann Draper—Berkeley. Heretofore mentioned.
Diana Dufault—Berkeley; Citizens for Farm Labor.
Ron Eastwood—Hayward. Arrested Oct. 19, 1965.
John Eshleman—Mill Valley, Oct. 28, 1965; car used in strike.
Robert Edwin Fisher—Los Angeles; CORE; arrested in Los Angeles, Mississippi, and Georgia in civil rights demonstrations.
Peter Lawson Flint—Sun Valley. Arrested Oct. 19, 1965.
Peter Franck—attorney, Berkeley; associated with Alexander Hoffman, heretofore mentioned, Sept. 19, 1965.
Rodney Clark Freeland—San Francisco, on picket line, Oct. 1965.
Lewis Arthur Fretz—Citrus Heights. Arrested Oct. 19, 1965.
Marshall Ganz—Los Angeles; see entry Boris Guru.
Charles Gardinier—Oakland, Del Rey.
Barbara Garson—Berkeley; heretofore mentioned.
Wendy Goepel—Three Rivers; heretofore mentioned.
Paul Goldman—Los Angeles; on picket line, Oct. 1965.
Marian Gordon—Los Angeles. Guest of AWOC, Nov. 6, 1965. (Exhibit VIII, pp. 180–182.)
Peter Gurion, Jr.—San Francisco, at Delano 1965 in strike area.
Boris Guru—British Guiana, South America; brought in by Marshall Ganz to join the cause in late 1965.
Donna Sue Haber—1919 Oregon Street, Berkeley, heretofore mentioned. (See Exhibit XII, p. 187).

Patrick Hallinan, attorney—San Francisco. One of the founders of the DuBois Clubs. At Delano strike headquarters on same day as Margaret Lima.

Patricia Lynn Hansen—Marin City. Arrested Oct. 19, 1965.

Howard Harawitz—heretofore mentioned.

Wayne C. Hartmire, Migrant Ministry—Los Angeles; a strike leader.

Alexander P. Hoffman, attorney—Berkeley. On strike scene almost continually, heretofore mentioned.

Mary Frances Humphrey—Los Angeles; active in civil rights demonstrations, Los Angeles; arrested Oct. 19, 1965.

Walter Infeld, Jr.—Concord; on strike scene late 1965.

Silvia Kalitinsky—bay area; arrested at Sproul Hall invasion, Dec. 1964; volunteer on picket line at Delano with Ida Cousino and Mike Sayer of SNCC; she doubled as a reporter for the *National Guardian.*

Dorothy Kauffman (Mrs. William Kauffman)—active in Catholic Workers Organization; mem. Advisory Board of Citizens for Farm Labor; was at Delano headquarters on Dec. 11, 1965.

Ralph Angus Kennedy—Fullerton. Arrested Oct. 19, 1965.

Virginia Kiezel—Fremont; was in Delano with Saul and Billie Wachter, Nov. 6, 1965.

Sam Kushner—Los Angeles; heretofore mentioned. (See Exhibit XV, p. 190.)

John C. Leggett—University of California, Berkeley; heretofore mentioned.

Albert J. Lima—Oakland; heretofore mentioned.

Joan London—bay area; an instructor for the Students Summer Project, Delano.

Richard A. McGowan—Los Altos; in strike area 1965.

Rev. Chuck McLain—Pasadena; arrested Oct. 19, 1965.

Mike Miller—San Francisco; SNCC; at Delano Nov. 20, 1965.

Eugene Nelson—No address listed; heretofore mentioned as propagandist; author of *Huelga;* in Texas, 1967.

Robert A. Niemann—Los Angeles; car in Delano, 1965.

Selden Leroy Osborne—San Francisco; arrested Oct. 19, 1965.

Henry Papa—Santa Cruz; car in Delano, 1965.
Frank Paz—Los Angeles; set up Emergency Committee to Aid Strikers, 1965.[82]
Theodore Dale Peck—New Mexico; arrested Oct. 19, 1965.
Al Plummer—Idaho; in strike activities, 1965, 1966.
Johannes Posthumus—San Francisco; car at Delano, 1965.
Roscoe Q. Proctor—1919 Oregon Street, Berkeley; car at Delano, Jan. 30, 1966; member, National Committee, Communist Party, U.S.A.
Benjamin Ratner—Bakersfield; activist in strike.
Harvey Richards—Atherton; photographer for *People's World.* (Exhibit VI, p. 178.)
Howard Richards, attorney—Santa Barbara American Civil Liberties Union; car used as strike vehicle.
Louis Henry Riley—Palo Alto; picketed with sign "End the War in Vietnam," Sept. 30, 1965.
Jonathan Harold Roise—*Stanford Daily;* car at Delano, 1965.
Alexander Rosman—Woodland Hills; car at Delano, 1965.
Thomas Paul Ross, Jr.—Berkeley; arrested Oct. 14, 1965.
Tom Sanders—Berkeley; registered with Hal Verb, Nov. 6, 1965; both heretofore mentioned as members of Socialist Workers Party. (Exhibit VIII, pp. 180–182.)
Mike Sayer—no address given; SNCC; active in boycott activities.[83]
Donald Hoyt Schilling—Marin City; arrested Oct. 19, 1965.
William Curt Schilling—Cincinnati, Ohio; arrested Oct. 19, 1965.
Cathy Sissons—no address given; clerk in NFWA office, 1965.
Jack Skirball—Los Angeles; at Delano, 1965.
Carl Alexander Smith—Palo Alto; arrested Oct. 19, 1965.
Robert J. Solodow—Los Angeles; CORE; stated he was a Communist often arrested in civil rights dem-

[82] *Ibid.,* p. 115.
[83] *Ibid.,* p. 82.

onstrations at Alabama and Mississippi; active at Delano commencing Oct. 4, 1965.

Jack Lagunas Soria—Oxnard; active in strike until at least Feb. 1966.

Peter K. Soto—Fremont; came to Delano on Nov. 6, 1965, with Saul and Billie Wachter, heretofore mentioned.

Wayne Thine—Berkeley; active in strike until at least May, 1966.

Luis Valdez—San Francisco or San Jose; organized El Teatro Campesino, touring U.S. in 1967; was active on strike scene; heretofore mentioned.

Victor J. Van Bourg, attorney—San Francisco; was attorney for Berkeley student demonstrators who were disciplined in April, 1966; police reported him striving to create friction between strikers and officers.[84]

Clifford Vaughs—Los Angeles; local director of SNCC; active on Delano picket lines. (Exhibit VI, p. 178.)

Harold Verb—Berkeley; Socialist Workers Party (Trotskyite); writes for *The Militant* and *Berkeley Barb;* heretofore mentioned with Tom Sanders.

Saul and Billie Wachter—Fremont; came to Delano with caravan, Nov. 6, 1965; heretofore mentioned as Communists. (Exhibit VIII, pp. 180–182.)

David Watkins—Dinuba; car used as strike vehicle, 1965.

John L. Werner—Huntington Beach; car used as strike vehicle, 1965.

Carl Westman—Los Angeles area; reporter for *People's World;* frequently at Delano.

Anthony Wilkinson—Los Angeles and San Francisco—son of Frank Wilkinson, Los Angeles; member of San Francisco State College DuBois Club; in Delano Dec. 1965.

David Williams—Signed AWOC Register as "Sociology Professor," on Oct. 30, 1965, with social worker Anita Palm; was an early volunteer for strike activity; represented American Federation of State, County and Municipal Employees, Contra Costa County. (Exhibit VII, p. 179.)

[84] San Francisco *Chronicle,* April 2, 1966.

Allen Zak, or Laurence Allen Zak—Los Angeles area; heretofore mentioned as a chairman of DuBois Club near Venice, California; reporter for *People's World.*

This list is included for the purpose of showing the numbers and backgrounds of outsiders who came to aid the strikers, and to influence their activities. The list is by no means complete, as there were hundreds more names on the official AWOC register, and many others who did not register. The names of the *People's World* reporters are included not for the reason that they were reporters covering the scene, but because each was a trained and disciplined activist, and affiliated with a revolutionary world movement whose members are necessarily activists and consultants in these labor controversies, as is proven by their history throughout the years.

As we have stated, the list was compiled from official registers of the strike organization itself, together with official records of the law enforcement agencies in the area.

We are certain that the 500 members of AWOC, and a large majority of the membership of NFWA were in no way connected with any of the New Left or subversive organizations that swarmed to Delano. The concern of the membership of the unions, and after they merged, of the resulting union, was and is to obtain better wages and working conditions. We *are* saying that *outsiders* entered the Delano strike for the purpose of using it for their own purposes, and also that the leaders of the unions were perhaps carried away with the idea of achieving power to dictate terms to the growers, and—to some extent—to the state and federal governments.

SPRING MOBILIZATION—1967

History

In the first report issued by this committee in 1943, we discussed a peace group comparable to the Spring Mobilization Committee and the Student Mobilization Committee which promoted the massive demonstrations in New York and San Francisco on April 15, 1967. We quote from page 96 of our 1943 report:

> "The American Peace Mobilization was a Communist front organization created shortly after the signing of the Hitler-Stalin pact. About that time, the Anti-Nazi League of Hollywood and other anti-Fascist front organizations of the Communist Party went out of business and Peace Congresses throughout the country generally, and the American Peace Mobilization in California particularly, came into being practically overnight. . . ."

In other words, it became expedient for the Communist Party, in support of the Soviet Union which had allied itself with Hitler, to try to prevent the United States from entering the war that was then in process in Europe.

But the situation changed abruptly when Hitler double-crossed Stalin and launched an attack on Soviet territory in June 1941. Then the Soviet Union needed help, and we beheld the spectacle of Communist-controlled peace organizations suddenly transforming themselves into bands of bloodthirsty jingoists urging the United States to enter the war. After Pearl Harbor and the entry of United States into World War II, it is well remembered by those who have followed Communist Party activities over many years, that the CPUSA was frantically beating the drums for United States to open a second front in Europe to draw some of Hitler's forces out of the Soviet Union. For instance, in our 1945 report, page 138, we quoted from the Communist *Daily People's World* of July 9, 1943, which reveals sentiment diametrically opposite from that of the peace fronts of 1941.

". . . now, in this crucial summer of 1943, as we prepare for the greatest military offenses to smash the Axis enemy, as we fight to hold the home front against the fifth column, as we look ahead to the 1944 elections —we feel that the *People's Daily World* will be more needed than ever . . ."

The Communist Party, U.S.A., is neither antiwar nor prowar, *per se*. It is simply pro-Soviet, and only that. All Communists witnessed stark proof of this with the complete reversals of the world Communist line toward war in 1939 and again in 1941. From the time the Third International was formed, when each member party throughout the world was required to sign Lenin's famous 21 points, those mandates were binding. They still are, despite changes in name and organizational structure of the world apparatus.

Two of Lenin's 21 points, pertinent to this matter, adopted July 1920, are:

"1. The entire propaganda and agitation must bear a genuinely communistic character and agree with the program and the decisions of the Third International. All the press organs of the party must be managed by responsible Communists, who have proved their devotion to the cause of the proletariat . . ."

And Point 14:

"14. Every party wishing to belong to the Communist International is obligated to offer unqualified support to every Soviet Republic in its struggle with the counterrevolutionary forces. The Communist Parties must carry on a cleancut propaganda for hindering of the transportation of munitions of war to the enemies of the Soviet Republic; and furthermore, they must use all means, legal or illegal, to carry propaganda, etc., among the troops sent to throttle the workers republic." [1]

There is ample evidence of the Communist effort to soften, infiltrate and subvert the countries of southeast

[1] Quoted from W. J. Ghent's book, *The Reds Bring Reaction*, Princeton University Press, 1923. See Appendix A, p. 87.

Asia, Africa, and Latin America.[2] Therefore, the war in Vietnam, which blocks the effort of world Communism to consolidate the countries of southeast Asia under the Moscow aegis, must be opposed at all costs. The national convention of the Communist Party, U.S.A., placed this matter high on its agenda in June 1966. Daniel Rubin described it in an article in *Political Affairs,* which is the official in-depth organ of the Communist Party.

> "We were front-page news in every city, town and hamlet of this country and of all the western capitalist countries, not to mention the voluminous treatment given in the mass media of the socialist countries.
>
> "Much of the publicity identified the party with the struggle to get U.S. out of Vietnam as our number one task. Considering the level of mass sentiment on this issue, such as publicity, far from projecting the Communists as alien to the U.S. scene, related us closely to the deeply felt sentiments of millions of our countrymen."[3]

This, we feel, quite clearly states the situation: It is the Communist Party's number one task to get the United States out of Vietnam.

Plans for a spring mobilization were formulated in a meeting at the University of Chicago, December 28–30, 1966. A "national student strike for peace" was planned to promote "Get out of Vietnam" demonstrations for April 8–15, 1967. A number of young Communist Party members took part in that meeting, including Bettina Aptheker.

In addition to the youth group, or Student Mobilization Committee, a spring mobilization organization was set up with headquarters in New York. The Student Mobilization Committee was an outgrowth of a National Student Strike for Peace, originally promoted by self-described Communist Bettina Aptheker and other Com-

[2] See: *The Yenan Way,* by Eudocio Ravines, Chas. Scribner's Sons. N.Y., 1951; *Inside A Soviet Embassy,* by Aleksandr Kaznatcheev, J. B. Lippincott Co., N.Y., 1962; *Soviet Design for a World State,* by Elliott R. Goodman, Columbia University Press, N.Y., 1960; *Worldwide Communist Propaganda,* by F. Bowen Evans (Ed.). MacMillan Co., N.Y., 1955; *Struggle for Asia,* by Sir Francis Low, Frederick A. Praeger, N.Y., 1955.

[3] *Political Affairs,* August 1966, p. 14.

munist youth and W. E. B. DuBois Club members, as pointed out in a most comprehensive study made by the House Committee on Un-American Activities.[4]

In the *Daily Californian* of January 30, 1967, Miss Aptheker set forth the objectives of the spring mobilization:

"1. Bring troops home now;
"2. Oppose the draft;
"3. Oppose campus complicity with the war effort."

These objectives are practically identical with those which Miss Aptheker and her Communist Party colleagues proposed at the above-mentioned meeting in Chicago, which were set forth in the report in the *National Guardian* of January 14, 1967:

"1. Bringing the GI's home now;
"2. Opposing the draft and supporting the rights of individuals who refuse to cooperate with the military systems.
"3. Ending campus complicity with the war effort."

The Student Mobilization Committee on the Berkeley campus was supported in its objectives by: Professors Richard Strohman, Reginald Zelnik, Peter D. Scott, Franz Schurmann, Stanley Fowler of the Cal Christian Students; Brian O'Brien and Robert Atkins of the American Federation of Teachers, Local 1570, and by Mario and Suzanne Savio and Carolyn Craven.[5]

The Trotskyist-Communists moved into a strong lead in promoting the spring mobilization, and Miss Aptheker found herself in the anomalous position of having to work with the one-time sworn enemies of her Communist sect. The Socialist Workers Party (Trotskyists), 2001 Milvia Street, Berkeley, provided space for the Student, or Campus, Mobilization Committee.[6]

Kipp Dawson, the executive director of the Spring Mobilization Committee, the adult organization, was a

[4] House Committee on Un-American Activities Report, *Communist Origin and Manipulation of Vietnam Week, April 8–15, 1967,* published March 31, 1967.
[5] *Daily Californian,* January 30, 1967.
[6] See: *Communique for New Politics,* March 30, 1967.

member of the Socialist Worker Party (SWP).[7] Matters were somewhat evened out, however, between these two sects as Spring Mobilization Committee was quartered at 55 Colton Street, San Francisco, which was also the office of Californians for Liberal Representation. It is essential to bear in mind that the Trotskyist-Communists of the Fourth International also support the Castro and Ho Chi Minh regimes. The Progressive Labor Party supports Mao, Castro and Ho Chi Minh—hence all are opposed to the U.S. in Vietnam, and lay aside their ideological differences in a common cause.

Edward Keating, West Coast chairman of Spring Mobilization, was also the publisher of the leftwing publication *Ramparts,* and his assistant was Don Rothenberg,[8] who was identified as a member of the Communist Party, U.S.A., in testimony before HCUA in 1961. Rothenberg is also northern director of Californians for Liberal Representation, which provides a sufficiently close proximity to the CPUSA to be represented in the protest march of April 15 in San Francisco.

The West Coast organ of the Communist Party, *People's World,* in its issue for April 15, 1967, stated in a front-page article by Margrit Pittman that:

> "This national mobilization will affirm the will of the American people for peace in Vietnam, and a new life for America and for all mankind.
>
> "We speak to the people around the world to mobilize to stop the war in Vietnam. We declare not merely a protest, but a new beginning."

The article continues to explain that the "new beginning" concept was expressed at a standing-room-only meeting of the Mobilization Steering Committee on April 11, and that "it was discussed at length and heatedly, but what emerged from the divergence of views was the agreement that this movement is entering upon a new phase and might save this nation from disaster."

[7] HCUA report, *Communist Origin and Manipulation of Vietnam Week, op. cit.,* p. 34.

[8] Masthead, *Ramparts,* March 1967.

The March

A parade was planned by the Spring Mobilization Committee from Market Street to Second Street at 10 a.m., Saturday, April 15. The march was to proceed four miles to Kezar Stadium in Golden Gate Park, where the rally would be addressed by such speakers as Mrs. Martin Luther King, Robert Vaughn, TV star, and Julian Bond, of the Georgia Legislature. A corresponding rally was planned for New York City on the same day, with hundreds of thousands of antiwar demonstrators expected.

However, on the eve of the event in San Francisco, disagreement broke out. The Northern California Committee for a Sane Nuclear Policy (SANE) refused to join the protest, saying it would go ahead with its independent "Negotiation Now" drive to get one million signatures supporting United Nations Secretary U Thant's efforts to bring about peace. San Francisco restaurateur Victor Bergeron, of Trader Vic's, protested the use of his name in connection with the event, and the Folk Dance Federation of California did likewise. The latter condemned "a false piece of publicity" which had listed that group's "Blossom Festival" as part of the anti-Vietnam war program.

While some religious leaders urged participation in the march, Rev. Andrew Juvinall and 60 or more ministers and priests from other parts of the state, and the San Francisco Council of Churches announced a boycott of the mobilization.

Nevertheless, as in the case of the massive protests prior to United States entry into World War II, the antiwar spirit ran high. Demonstrators arrived in chartered buses from all over the state and other parts of the West. The Mobilization Committee announced that it expected at least 10,000 marchers in the parade, and from 50,000 to 60,000 in attendance at the Kezar Stadium rally. The Steering Committee agreed to provide 700 monitors with armbands and 15 parade captains to help keep order in the procession, and extra police were assigned to the route.

A warmup rally was held in Wheeler Auditorium on the university campus in Berkeley the evening before the San Francisco march to hear Robert Scheer and several other speakers criticize American involvement in Vietnam.

Scheer is quoted as saying: "Americans should reevaluate the entire concept of foreign policy, especially since it is based on the theory of the international Communist conspiracy." He cited the Sino-Soviet split, independent North Korea and Albania to prove, as he said, that "such a conspiracy simply does not exist."

Scheer, who early in 1967 went to Prague, Czechoslovakia, reputedly the headquarters of several international Communist fronts, is probably in a good position to answer the question factually. We quote from the March 12–26 issue of *Sunday Ramparts* (page 6):

> "Scheer, in London to interview Bertrand Russell, did indeed go to Prague to interview representatives of Vietnam's National Liberation Front. After visiting Leiden, Holland, to interview leaders of the International Student Conference in connection with the CIA-NSA story, he also spoke to members of the International Union of Students, ISC's pro-Communist counterpart, headquartered in Prague, to develop any further information for the forthcoming CIA exposé."

Fifty Thousand Protest in San Francisco

The Spring Mobilization, both in New York and San Francisco, brought out greater numbers of people than even the organizers had predicted; an estimated 125,000 in New York, and 50,000 to 60,000 in San Francisco. In New York, about 100 young men led by Gary Rader, 23, president of the student body at Northwestern University of Evanston, Illinois, burned their draft cards as part of the demonstration. Also, a crowd in Central Park burned a large United States Flag while others stood by, cheering. The New York rally heard Dr. Martin Luther King, who recently had been trying to amalgamate the civil rights and anti-Vietnam war movements. Dr. Benjamin Spock of SANE, which had boycotted the San Francisco Mobilization, Floyd McKissick of CORE and Stokely Carmichael of the Student Nonviolent Coordinating Committee, were listed as speakers.

In San Francisco, an estimated 35,000 people, most of whom were under 25, marched up Market Street in a line that was as long as Market Street itself. The march began

about half an hour ahead of schedule, and when the leaders arrived at Kezar Stadium four miles distant, other demonstrators were still forming at the starting point, and this, despite a light rain that was falling during the morning. The parade included groups with many causes, from black nationalism to Henry George's mild form of socialism, and there were "thousands of pacifists" who expressed sympathy for the National Liberation Front of North Vietnam. At one point of the march, about 18 members of the American Nazi Party heckled the marchers, but they were quickly dispersed by police.

Among the causes blazoned on placards and banners were Bertrand Russell's mock war crimes trial of President Johnson, the Viet Cong, and civil rights.

Following the unprecedented success of the parade and the events that followed, the leftist and subversive elements that were involved will undoubtedly continue to angle in these troubled waters, consolidate their gains and push not only for an end of the war, but a victory for the North Vietnamese Communist forces. It also means that they have ingratiated themselves deep in the heart of pacifist groups that have heretofore repudiated them.

SPRING MOBILIZATION APPENDIX A

THE REDS BRING REACTION

BY W. J. GHENT

PRINCETON
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1923

APPENDIX A

THE TWENTY-ONE POINTS[1]

(*Adopted July*, 1920)

THE second congress of the Communist International adopts the following conditions for membership in the Communist International:

1. The entire propaganda and agitation must bear a genuinely Communistic character and agree with the program and the decisions of the Third International. All the press organs of the party must be managed by responsible Communists, who have proved their devotion to the cause of the proletariat. The dictatorship of the proletariat must not be talked about as if it were an ordinary formula learned by heart, but it must be propagated for in such a way as to make its necessity apparent to every plain worker, soldier and peasant through the facts of daily life, which must be systematically watched by our press and fully utilized from day to day.

The periodical and non-periodical press and all party publishing concerns must be under the complete control of the party management, regardless of the fact of the party as a whole being at that moment legal or illegal. It is inadmissible for the publishing concerns to abuse their autonomy and to follow a policy which does not entirely correspond to the party's policy.

In the columns of the press, at public meetings, in trade unions, in co-operatives, and all other places where the supporters of the Third International are admitted, it is neces-

[1] There are two English translations current (both of them obviously bad) of this famous document.

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sary systematically and unmercifully to brand, not only the bourgeoisie, but also its accomplices, the reformers of all types.

2. Every organization that wishes to affiliate with the Communist International must regularly and systematically remove the reformist and "centrist" elements from all the more or less important posts in the labor movement (in party organizations, editorial offices, trade unions, parliamentary groups, co-operatives, and municipal administrations) and replace them with well-tried Communists, without taking offense at the fact that, especially in the beginning, the places of "experienced" opportunists will be filled by plain workers from the masses.

3. In nearly every country of Europe and America the class struggle is entering upon the phase of civil war. Under such circumstances the Communists can have no confidence in bourgeois legality. It is their duty to create everywhere a parallel illegal organization machine which at the decisive moment will be helpful to the party in fulfilling its duty to the revolution. In all countries where the Communists, because of a state of siege and because of exceptional laws directed against them, are unable to carry on their whole work legally, it is absolutely necessary to combine legal with illegal activities.

4. The duty of spreading Communist ideas includes the special obligation to carry on a vigorous and systematic propaganda in the army. Where this agitation is forbidden by laws of exception it is to be carried on illegally. Renunciation of such activities would be the same as treason to revolutionary duty and would be incompatible with membership in the Third International.

5. It is necessary to carry on a systematic and well-planned

agitation in the country districts. The working class cannot triumph unless its policy will have insured it the support of the country proletariat and at least a part of the poorer farmers, and the neutrality of part of the rest of the village population. The Communistic work in the country is gaining greatly in importance at the present time. It must principally be carried on with the help of the revolutionary Communist workers in the city and the country who have connections in the country. Renunciation of this work or its transfer to unreliable, semi-reformist hands is equal to renunciation of the proletarian revolution.

6. Every party that wishes to belong to the Third International is obligated to unmask not only open social patriotism, but also the dishonesty and hypocrisy of social pacifism, and systematically bring to the attention of the workers the fact that, without the revolutionary overthrow of capitalism, no kind of an international court of arbitration, no kind of an agreement regarding the limitation of armaments, no kind of a "democratic" renovation of the League of Nations, will be able to prevent fresh imperialistic wars.

7. The parties wishing to belong to the Communist International are obligated to proclaim a clean break with reformism and with the policy of the "center" and to propagate this break throughout the ranks of the entire party membership. Without this a logical Communist policy is impossible. The Communist International demands unconditionally and in the form of an ultimatum the execution of this break within a very brief period. The Communist International cannot reconcile itself to a condition that would allow notorious opportunists, such as are now represented by Turati, Kautsky, Hilferding, Hillquit, Longuet, Macdonald, Modigliani, et al., to have the right to be counted as members of the Third Interna-

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tional. That could only lead to the Third International resembling to a high degree the dead Second International.

8. In the matter of colonies and oppressed nations a particularly clean-cut stand by the parties is necessary in those countries whose bourgeoisie is in possession of colonies and oppresses other nations. Every party wishing to belong to the Communist International is obligated to unmask the tricks of its own imperialists in the colonies; to support every movement for freedom in the colonies, not only with words but with deeds; to demand the expulsion of its native imperialists from those colonies; to create in the hearts of the workers of its own country a genuine fraternal feeling for the working population of the colonies and for the oppressed nations, and to carry on a systematic agitation among the troops of its own country against all oppression of the colonial peoples.

9. Every party wishing to belong to the Communist International must systematically and persistently develop a Communist agitation within the trade unions, the workers' and shop councils, the co-operatives of consumption and other mass organizations of the workers. Within these organizations it is necessary to organize Communistic nuclei[1] which, through continuous and persistent work, are to win over the trade unions, etc., for the cause of Communism. These nuclei are obligated in their daily work everywhere to expose the treason of social patriots and the instability of the "center." The Communist nuclei must be completely under the control of the party as a whole.

10. Every party belonging to the Communist International is obligated to carry on a stubborn struggle against the Amsterdam International of the yellow trade unions. It must carry on a most emphatic propaganda among the workers or-

[1] In the other translation, "cells."

ganized in trade unions for a break with the yellow Amsterdam International. With all its means it must support the rising International Association of the Red trade unions which affiliate with the Communist International.

11. Parties wishing to belong to the Third International are obligated to subject the personnel of the parliamentary groups to a revision, to cleanse these groups of all unreliable elements, and to make these groups subject to the party executives, not only in form but in fact, by demanding that each Communist member of parliament subordinate his entire activities to the interests of genuinely revolutionary propaganda and agitation.

12. The parties belonging to the Communist International must be built upon the principle of democratic centralization. In the present epoch of acute civil war the Communist party will be in a position to do its duty only if it is organized along extremely centralized lines, if it is controlled by iron discipline and if its party central body, supported by the confidence of the party membership, is fully equipped with power, authority and the most far-reaching faculties.

13. The Communist parties of those countries where the Communists carry on their work legally must from time to time institute cleansings (new registrations) of the personnel of their party organization in order to systematically rid the party of the petit bourgeois elements creeping into it.

14. Every party wishing to belong to the Communist International is obligated to offer unqualified support to every Soviet republic in its struggle against the counter-revolutionary forces. The Communist parties must carry on a clean-cut propaganda for the hindering of the transportation of munitions of war to the enemies of the Soviet Republic; and furthermore, they must use all means, legal or illegal, to carry propaganda,

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etc., among the troops sent to throttle the workers' republic.

15. Parties that have thus far still retained their old Social Democratic programs are now obligated to alter these programs within the shortest time possible and in accordance with the particular conditions of their countries, work out a new Communist program in the sense of the decisions of the Communist International. As a rule the program of every party belonging to the Communist International must be sanctioned by the regular congress of the Communist International, or by its executive committee. In case the program of any party is not sanctioned by the executive committee of the Communist International, the party concerned has the right to appeal to the congress of the Communist International.

16. All decisions of the congress of the Communist International, as well as the decisions of its executive committee, are binding upon all the parties belonging to the Communist International. The Communist International, which is working under conditions of the most acute civil war, must be constructed along much more centralized lines than was the case with the Second International. In this connection, of course, the Communist International and its executive committee must, in their entire activities, take into consideration the varied conditions under which the individual parties have to fight and labor, and adopt decisions of only general application regarding such questions as can be covered by such decisions.

17. In connection with this, all parties wishing to belong to the Communist International must change their names. Every party wishing to belong to the Communist International must bear the name: Communist party of such and such a country (section of the Third Communist International). The question of name is not only a formal matter, but is also to a high degree a political question of great importance The Communist

International has declared war upon the whole bourgeois world and all yellow Social Democratic parties. It is necessary to make clear to every plain workingman the difference between the Communist parties and the old official "Social Democratic" and "Socialist" parties that have betrayed the banner of the working class.

18. All the leading press organs of the parties of all countries are obligated to print all important official documents of the executive committee of the Communist International.

19. All parties that belong to the Communist International, or that have applied for admission to it, are obligated to call, as soon as possible, but at the latest not more than four months after the second congress of the Communist International, a special convention for the purpose of examining all these conditions. In this connection the central bodies must see to it that all the local organizations are made acquainted with the decisions of the second congress of the Communist International.

20. Those parties that have thus far wished to enter into the Third International, but have not radically changed their former tactics, must see to it that two-thirds of the members of their central committees and of all their important central bodies are comrades who unambiguously and publicly declared in favor of their parties' entry into the Third International before the second congress of the Communist International. Exceptions may be allowed with the approval of the executive committee of the Third International. The executive committee of the Communist International also has the right to make exceptions in the cases of the representatives of the "center" tendency named in paragraph 7.

21. Those party members who, on principle, reject the conditions and theses laid down by the Communist International

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are to be expelled from the party. The same thing applies especially to delegates to the special party convention.

COMMUNITY FOR NEW POLITICS

National Organization

The New Program of the CPUSA has launched political movements through which the party seeks to control candidates for public office. Especially pertinent to this end is the last paragraph of the Communist Party's New Program:

> "We are ready and willing to join with others on the Left to create agencies or sponsor candidates to present Left policies and viewpoints in the public arena. We insist, however, that such endeavors complement, rather than contradict, the broader progressive movements that are still confined within the two-party framework." [1]

Clearly, the Communists were looking far beyond the spring campaigns of 1966 when they drafted this New Program. Such proved to be the case, and we venture to predict that this line will be pursued until they are either able to launch a captive third party or abandon the project as hopeless. Actually, a political third party or open Communist political party is not quite as frightening as it may appear. In the mid-1940's, the Communist Party decided on just such a course, and created the Independent Progressive Party. We described it in our 1947 report, pages 233–244. There are many parallels to the present situation, but more important is what happened to the Independent Progressive Party, which we reported in our 1955 report, page 45:

> "The Communist control of the Independent Progressive Party soon became so pronounced and so arrogant that it drove the sincere liberals from its ranks, leaving only a handful of the most fanatic. This exodus from the organization grew to such an extent that at the last statewide political election in which Independent Progressive Party candidates

[1] *New Program of the Communist Party*, U.S.A., New York, Political Affairs Publishers, 1966.

were eligible to participate, the voting strength of the organization fell so far below the state requirement that it could not qualify as a political party in California."

The political climate of today is considerably different from 1946 and 1947. The *ad hoc* operations of the New Left in the fields of civil rights, the student protests, and protests against the war in Vietnam have built up a much greater acceptance of the Communist Party name than existed twenty years ago. New Left leaders, such as Carl Oglesby, president of Students for a Democratic Society, said that Communists were "welcome" in his organization.

As an example of New Left strange bedfellows, there was a Referendum Committee, set up to promote a Peace Referendum on the ballot in the Berkeley Municipal Election of April 4, 1967, which was composed of Bettina Aptheker, CPUSA; Peter Camejo, Socialist Workers Party; Robert Avakian, Community for New Politics (an outgrowth of Scheer-for-Congress); Carl Frank of the Vietnam Day Committee; Cliff Humphrey, United Committee Against War; Hal Jacobs, Students for a Democratic Society; Robert Randolph, Berkeley correspondent for the leftwing *National Guardian;* John Raymond, editor of the *Berkeley Citizen,* newspaper of the Berkeley Co-ops; Robert Scheer, managing editor of *Ramparts* magazine; Max Scherr, publisher of the *Berkeley Barb,* and Reginald Zelnik, Faculty Peace Committee on the Berkeley Campus.

Other known Communists also achieved a degree of "social recognition," one of whom we will discuss a little later. It is possible that an open Communist Party can win a place on the ballot in some states in the near future; California and New York would undoubtedly be the first. What we are dealing with here is a group which has been launched by Communists, with non-Communists cooperating.

In May 1966, while most of the New Left campaigns were under way, a National Conference for New Politics (NCNP) was set up in Washington, D.C. (Exhibit I.) An organizational meeting was held in New York on June 11 and 12, only a few days before the opening of the national convention of the Communist Party, U.S.A. We quote

from an article on this meeting from the *National Guardian* of June 18, 1966, page 2:

> "The organization developed out of a year of meetings and talks looking forward to the support of candidates in local campaigns who have accepted 'new politics.' A statement of purpose defines the new politics as 'a politics of ordinary people who want to control democratically the decisions that affect their lives . . .' This new politics is built by people who demand that our nation fulfill its pledge to abolish racial discrimination and poverty; who understand the necessity of ending the cold war and American military intervention abroad, and creating world disarmament and a decent relationship with societies undertaking revolutionary change; who want to end the depletion of our resources by an ever-growing military budget and use our enormous productive capacity to meet the staggering social needs that led to Watts, for ending the public squalor that disfigures our cities, our suburbs and our countryside, and for building a good society at home and abroad."

The *People's World,* West Coast organ of the Communist Party, in reporting the same meeting phrased the same four "demands," as:

> "1. The end of the Vietnam war, the cold war and all U.S. intervention abroad;
> "2. The abolition of racial discrimination;
> "3. World disarmament and a decent relationship with societies undertaking revolutionary change;
> "4. Use of present military appropriations to meet the staggering social needs of the country." [2]

We have no explanation for the slight discrepancy in reporting the issues unless they were purposely presented differently to a somewhat different set of readers. The *People's World* is *must* reading for Communist Party members on the West Coast; the *National Guardian* circulates in a wider spectrum of the left.

[2] *People's World,* June 18, 1966, p. 12.

Resuming the report of the *National Guardian:* Co-chairmen of NCNP were named as Julian Bond and Simon Casady. Again we quote:

> "The NCNP National Council, still in formation, covers a wide range of organizations and political philosophies from liberal to radical . . . from the Fellowship of Reconciliation to the Student Nonviolent Coordinating Committee; the World Federalists to the Mississippi Freedom Democratic Party (and individuals); the Reverend William Sloane Coffin, chaplain of Yale to Dick Gregory, the comedian; the editors and publishers of five weekly and monthly publications: *Nation, Ramparts, Frontier, Texas Observer* and *New York Review,* to two AFL-CIO union functionaries, State, County and Municipal Workers and Packinghouse Workers."

The organization planned to set up a $500,000 fund campaign and summer workshop on campaign techniques, beginning on the campus of the University of Michigan at Ann Arbor on June 20. The goal was to train 1,000 campaign workers who would, in turn, teach courses to persons engaged in campaigns. A headquarters office was opened at 663 Fifth Avenue, New York.

The *People's World* article names the following members of the National Board: Stokely Carmichael, Dr. Benjamin Spock, Paul Booth, of Students for a Democratic Society, Paul Albert and Michael Schneider, California Democratic Council (CDC), Josiah Beeman III, California Federation of Young Democrats, Warren Hinkle, Executive Editor, *Ramparts,* and Hallock Hoffman, secretary-treasurer, Center for the Study of Democratic Institutions, Santa Barbara, and president, Pacifica Foundation.[3]

This meeting stressed the "excellent" showing of "new politics" candidates, and the *People's World* summed up the showing of those in northern California in the June primary election as follows:

> William M. Bennett, "militant state Public Utilities Commissioner," 450,000 votes, statewide;

[3] *People's World,* June 18, 1966.

Robert Scheer, "waged a strong race," and received 45 percent of the Democratic vote in the Seventh Congressional District;

Robert Treuhaft, 30 percent of the vote for district attorney in Alameda County;

Edward M. Keating (*Ramparts*), 44 percent of the Democratic votes in the 11th Congressional District;

Philip V. Drath "lost a close battle in the First Congressional District."

The figures quoted are those of the *People's World*.

Whether or not the figures were slightly elasticized by the Communist publication, the fact remains that the Communist Party was enormously pleased with the results of the June 7, 1966, primary election in California. An article in their official publication, the monthly *Political Affairs* for September 1966. states:

> "The primary, which showed the increasing polarization of the California electorate under the strains of the escalating war in Vietnam and the unresolved problems of the new stage of the Negro struggle, had as its truly encouraging feature the phenomenal vote for the peace candidates. Incumbent congressional candidates who have notedly criticized the war, Philip Burton of San Francisco, Don Edwards of San Jose and George Brown of Los Angeles, won decisively. But even more significant, the new peace candidates uniformly registered in the neighborhood of 40–45 percent of the vote in the Democratic primary. Besides the widely publicized campaign for Congress of Robert Scheer in the Berkeley-Oakland area, there were five other such peace candidates for Congress including two in Los Angeles, as well as several candidates for the State Senate and Assembly. Included among the peace votes must be the fact that, as one paper put it, 'More than 85,000 people in Los Angeles voted for a peace candidate who is a well known Communist Party leader—Dorothy Healey . . . running for the nonpartisan office of Los Angeles County Tax Assessor.' "

Continuing quotations from the article, page 16:

> "The campaign provided an opening to broad sections of the non-Communist left as well as to youth.

> On campuses where she had previously spoken on the Communist Party generally, Comrade Healey was invited to return and speak on her campaign by such organizations as Students for a Democratic Society, CORE and the DuBois Clubs. Non-Communist youth were among her major campaign workers and literature distributors . . ."

On page 17:

> "What was the significance of the vote? The 86,000 vote was the highest ever attained by a Communist in California for any office where the Communist was not the only candidate challenging the incumbent. . . . The vote was definitely *not* an antiincumbent vote. Two other antiincumbent candidates were on the ballot, one (O'Connor) getting some 240,000, while the other got less than Comrade Healey . . ."

In other words, the Communist Party was jubilant over the California primary election results, even though none of the New Left candidates won. The National Conference for New Politics may or may not come under Communist Party domination. It is too early to predict. It cannot be predicted if it will form the nucleus of a national third party movement. Almost nothing has been heard about NCNP from the time of its inception up to the time of this writing, April 1967.

Paul Booth of Students for a Democratic Society, one of the national board, represented NCNP in the "mobilization" for Vietnam Week, April 8–15, 1967.[4]

At the beginning of the primary campaign in 1966, Californians for Liberal Representation of San Francisco, which had been dormant for some time, was revived with the arrival in California of Don Rothenberg, an experienced organizer and financial expert, who took over as northern California director. (See Exhibit II.)

Rothenberg, born July 19, 1924, in Brooklyn, New York, came to California from Cleveland, Ohio, in February 1966. His application for a telephone (526-0210), the one listed for him on the accompanying exhibit, was filed in Berkeley February 16, 1966, and he stated he had recently arrived from Cleveland and was employed by the Cali-

[4] HCUA report, *Communist Origin and Manipulation of Vietnam Week*, *op. cit.*, pp. 33, 51.

fornians for Liberal Representation. In testimony before the House Committee on Un-American Activities in Dayton, Ohio, on September 14, 1954, Rothenberg stated that he was then state director of the Ohio Progressive Party. Records of the House Committee on Un-American Activities for August 25, 1966, show that he had been the finance director for the National Rosenberg Committee, later known as the National Committee to Secure Justice for the Rosenbergs and Morton Sobell. Ethel and Julius Rosenberg were executed as spies for the Soviet Union, and Sobell is still serving time on his conviction as a spy. Testifying before the House Committee on Un-American Activities on June 11, 1951, Mrs. Mary Stalcup Markward, formerly secretary of the Washington, D.C., unit of the Communist Party, stated that Rothenberg had been a member of a Communist cell in Washington in 1943, and that he had been a District of Columbia organizer for the Southern Conference for Human Welfare, a Communist front. His subsequent activities have followed the same pattern, according to records of various dates of the House Committee on Un-American Activities, and of the Ohio Un-American Activities Committee.

Rothenberg, while still active in Californians for Liberal Representation (at this writing, April 1967) is also listed on the masthead of *Ramparts* magazine (March 1967) as assistant to the publisher. Edward Keating, publisher of *Ramparts,* was one of the candidates for Congress endorsed by Californians for Liberal Representation (CLR). He also took an active part in CLR, as we will bring out later in this report.

As to other members of the CLR, Arthur Bierman, San Francisco State College, and Franklyn Brann were signers of the statement supporting the Free Speech Movement. Malcolm Burnstein was one of the FSM attorneys,[5] and was at one time a member of the firm of Edises and Treuhaft, identified Communist attorneys. Insofar as Richard Strohman is concerned, he has been active in leftist activities on the campus of the University of California. Marshall Windmiller, San Francisco State College, was a contributor to the *People's World* of March 11, 1967,[6] and has long been identified with liberal-to-left causes in the bay area.

[5] See our 1965 report, p. 92.
[6] Page 11, "Muhammad Ali and the New Game."

Thomas Winnett was a member of the Finance Committee in the Scheer-for-Congress campaign.

However, none of the others approaches Don Rothenberg in importance. A party member of his experience and apparent capabilities can direct the activities of several organizations simultaneously.

Two more "peace" candidates were later added to the roster of those endorsed by CLR: Dr. Carlton Goodlett, onetime candidate for Governor, and Robert Treuhaft, for district attorney, Alameda County (nonpartisan). Both lost.

Soon after the election was over three CLR-endorsed candidates called a press conference to announce that their fight would continue. They were Phillip Drath, Edward M. Keating and Robert Scheer. They included in their group the absent Robert Treuhaft, William Bennett and Franklyn Brann of the Californians for Liberal Representation. Scheer led off with the statement: "I care nothing for the loyalty of the Democratic Party. I'm not a Democrat; I'm a human being."

The following day, Simon Casady, identifying himself as cochairman of the National Conference for New Politics, told the news media that his organization planned to develop "a skilled cadre of campaign workers to move in where they are needed," and that the issue on which candidates would concentrate would be ending the war in Vietnam, abolishing racial discrimination and poverty, redirecting national funds from the military to "social needs"; and "a decent relationship with societies undertaking revolutionary change." These then, were the planks of the platform of the National Conference for New Politics.

Robert Scheer moved quickly after the primary to build a permanent organization around his campaign staff, workers and contributors. About June 15, he sent out a form letter on the letterhead of Scheer for Congress, 2214 Grove Street, Berkeley, which read in part:

"Dear Friend:

"Your support was responsible for our moral victory and political success on June 7 . . .

"We have several exciting projects planned for the near future on which we need your help. Our precinct

workers can help Oakland's Ad Hoc Committee on Quality Education in its protest against segregation in and discrimination against Flatlands schools. We are setting up a project to tutor minority-group children in Oakland. We are also organizing a Legal Aid Committee which will provide free legal advice and help Oakland's poor obtain their legal rights. For these community projects to be successful, we must keep some of our offices staffed and open . . .

"Our next campaign meeting will be at 7:30 p.m. on Wednesday, June 29, at Washington School . . .

"Yours for Peace and Freedom,
"Robert Scheer"

In July, a biweekly publication came into being at the former Scheer-for-Congress headquarters, the name of which was *Communique for New Politics.* Volume I, Number One, dated July 25, 1966, carried the following announcement on the front page:

"TO ALL WHO SUPPORTED SCHEER FOR CONGRESS:

"Our campaign was founded on assumptions which are at odds with mainstream American politics. We are concerned with issues and not personalities. We were committed to development of community dialogue and involvement, and not merely to electoral victory. The fact that we obtained an unexpectedly large vote does not change this commitment, but rather reinforces it. The Community for New Politics was formed to carry out this commitment. We are, in fact, in a very favorable position to implement a 'new politics.' The campaign produced strong community ties and the beginnings of a serious program. If we succeed in new politics, it will serve as a much needed mode for American political life. If we fail to seriously attempt it we betray not only the larger community but our most significant hopes as well.

"This will be a more difficult period than that which preceded the election—it requires all of our support.

—Robert Scheer."

The concerns of the Community for New Politics (CNP), as given in the July 25 issue of *Communique* were: low-income housing and urban renewal in Oakland; code enforcement in North Oakland; city councils, Berkeley and Oakland, voting records; the Vietnam war and peace issues; schools—desegregation and quality education, and development of an alternative master plan for Berkeley, including health care. The following committees were announced: Berkeley precincts, Fred Gibson; platform, Ivan Kramer; tutorial, Claude Odon; peace action, Guy Saperstein; finance, Thomas Winnett; press and publicity, Pete Collier; elections analysis, Jeff Schevitz; legal aid, Malcolm Burnstein; newsletter, Bill Buckman (who was editor of *Communique* through 1966); and research, Joan Kramer.

In the issue of August 8, which was Number Two, the Ad Hoc Committee for Quality Education is given front page attention, as well as one of its leaders, Elijah Turner, for whom a "Turner Fund" was established at the headquarters of Community for New Politics, 2214 Grove Street, to send him to the Twelfth World Peace Congress, July 28–August 20, in Tokyo.

A meeting held July 30 in Berkeley at the Le Conte School auditorium to discuss "a meaningful role" for the organization in the November elections heard the following in a panel discussion: Benson Brown, Bob Kaufman, Mario Savio, Ernie Haberkern, Thomas Winnett, Douglas Hill, Carl Bloice and Don Rothenberg, who "gave a detailed explanation of procedure necessary to get an initiative measure on the ballot."[7]

Douglas Wachter, member of an old Communist family and a delegate from Berkeley to the 17th National Convention of the Communist Party of the United States in 1959,[8] was added to the staff of *Communique* as photographer in the September 5 issue. Professor Stephen Smale, former cochairman of the Vietnam Day Committee, who went to Moscow to attend the International Congress of Mathematics at the time the House Committee on Un-American Activities wanted to question him in Washington, told his story in that publication,

[7] *Communique for New Politics,* August 8, 1966.

[8] *Political Affairs,* March 1960, p. 73; see also, 1961 report, pp. 24, 28–32, 78; Supplement to 1966 report, p. 71.

concluding with the statement: "U.S. intervention [in Vietnam] is much more dangerous and brutal than the Soviet intervention in Hungary in 1956."

On the Berkeley campus, the Community for New Politics, or the registered student organization under the name Campus Community for New Politics, was represented on the Council of Campus Organizations by activist David Kolodney. This campus organization collaborated with Students for a Democratic Society in calling for a demonstration at the Navy recruiting table on November 30. This sparked the second student rebellion on the Berkeley campus.

The Campus Community for Scheer, which was the registered student organization for the Scheer-for-Congress campaign, filed an application on September 16, 1965, and those signing it were Jack Kurzweil and Conn Hallinan, with Professor Richard Strohman as faculty adviser.[9] Jack Kurzweil is Bettina Aptheker's husband; Conn Hallinan is one of the six sons of the leftwing attorney, Vincent Hallinan.

The Campus Community for New Politics registered for use of university facilities on October 28, 1966, and those signing the form were: David Fogarty, steering committee; J. Mike Syvanen, Jim Hawley and John E. Poole.[10] J. Mike Syvanen is one of those who signed the registration of the Communist Party Forum with Bettina Aptheker.[11] The liaison officer, David Kolodney, mentioned above, was one of those arrested in the Sproul Hall sit-in December 3, 1964, and was one of the leaders of the Free Speech Movement.

While the Scheer organization had officially left the campus, as stated by the former campaign coordinator, Zoe Isom in her article in *Steps,* Number One (publication of the Free University of Berkeley), the Campus Community for New Politics provided a link between the campus and the outside "community," and remained one of the active forces in pushing forward the objectives of the Scheer campaign.

[9] University records.
[10] *Ibid.*
[11] *Ibid.*

Names of both students and faculty were sought on the campus for a petition originated and circulated by the Community for New Politics seeking a charter amendment for the City of Berkeley to establish an Office of Peace Advocacy and Education, or Peace Information Office.[12] John R. Searle, special assistant to the chancellor on student affairs, was one of those who signed it, with Mario Savio, Malvina Reynolds, Don Rothenberg, Carl Bloice, Dr. Ephraim Kahn, Professor Franz Schurmann and Professor Richard Strohman. Names of 6,500 voters were necessary to put the issue on the ballot of November 8, and only 5,000 had been collected at the time of the deadline, but the CNP urged the petition circulators to try for the required number of names so a request for a special election could be made.[13]

Statewide Conference

In September, Scheer announced that his organization would work with Californians for Liberal Representation to promote a statewide conference on "New Politics," to be held in Los Angeles, September 30–October 2. (Exhibit III.) The purpose was to "weld California's unrepresented into a strong political force." "The unrepresented" were a favorite target of Robert Scheer's attention. It was at a meeting of the "Congress of Unrepresented People," sponsored by the Vietnam Day Committee, at Lake Merritt Park, Oakland, August 21, 1965, that Scheer laid down the gauntlet to Congressman Jeffery Cohelan.

Literature on the statewide conference was passed out on the university campus at Berkeley by the Campus Community for New Politics. Various other student organizations, including the Independent Socialist Club, the Vietnam Day Committee, Students for a Democratic Society, supported it. *Sunday Ramparts* of October 2, 1966, ran a quarter-page advertisement. In fact, the entire New Left community of California was involved in promoting the conference, as will be seen by the following partial list of sponsors: [14]

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[12] *Communique for New Politics*, Aug. 8, 1966.

[13] Ibid., Sept. 19, 1966.

[14] Brochure, *Statewide Conference on Power and Politics,* Sept. 30, Oct. 1, Oct. 2, (1966), issued by Statewide Conference Committee, 722 S. Western Ave., Los Angeles and 55 Colton St., San Francisco.

Dr. Murray Abowitz
Ruth Abraham
John Adair
Bettina Aptheker
Pat Arnold
Marshall Axelrod
Prof. Gerald Berreman
Jim Berland
John C. Blair
Mr. and Mrs. Leo Blanken
Carl Bloice
Franklyn K. Brann
Farrell Broslawsky
Lucia Buchanan
Malcolm Burnstein
Michael Caro
Rev. Ralph Capolungo
Eliseo Carrillo, Jr.
Clay Carson
Arthur Carstens
Simon Casady
Mary Clarke
Robert Cleveland
Joseph Close
Simmie Lee Coffey
Mark Comfort
Christopher Cooper
Bert Corona
George M. Cowell
Raymond Cox
J. C. Davis, Jr.
Phil Drath
Prof. and Mrs. Vincent Duckles
Christine DuGuay
Don Duncan
Roderick Duncan
Mert Dushkes
Edgar R. Edwards
Cassius Ellis
Ruth Ehrlich
William Ferguson
Kenneth Finis
Jerome Fishkin
A. E. Flanigan
Shirley Faust
H. Bruce Franklin
Rev. Stephen H. Fritchman
Tamara Furnish
John D. George
Ben Ginden
Elsie A. Giorgi
Juan Gonzalez
Robert E. Gonzalez
Dr. Carlton Goodlett
Booker Griffin
LeRue Grim
Dale Gronemeier
Keith Gundersen
Monty A. Guterman
John R. Haag
Louis Hall, Jr.
Terence Hallinan
Alice Hamburg
Mike Hannon
Timothy F. Harding
Willard Hastings
Douglas J. Hill
Warren Hinkle
Warren Hollier
Mr. and Mrs. Nolan Hubbs
Dick Hunter
Joseph P. Husar
Mrs. Clara James
Clyde Johnson
Serena Jutkowitz
Prof. Donald Kalish
Samuel Kalish
Edward Keating
Susan Kidder
Leroy King
Lin Kissane
Ruth P. Koshuk
Fredericka Kushner
Peter Lackowski
Edward Lamar
Davis Landy
Ben Leeds
John LeFlore
Jerry Lennon
Jim Lennon
George Leppert
Mark Lester
Cricket Levering
Marylouise Lovett
Victor Ludwig
Clifford E. McClain
James McClellan
Mary Mahon
Pierre Mandel
Rayner Mann

John V. Manning
Michael B. Marcus, Ph.D.
Bertha Marshall
Ralph Merola
Richard Miller
Ernest Moore
Percy Moore
Mr. and Mrs. George H. Mount
Frank Munoz
Nancy Murphy
Linus Pauling
Paul Perlin
Paul Phillips
Anne H. Pollock
Ramon Ponce
Mr. and Mrs. Wally Porter
Carol Powell
Mr. and Mrs. Concepcion Ramirez
William Raymond
Saul Reider
Mr. and Mrs. Tom Richards
Helen F. Robello
Al Roma
Edmond Rosen
Mr. and Mrs. Hershel Rosenthal
Don Rothenberg
Jerome N. Sampson
Irving Sarnoff
C. Wade Savage
Robert Scheer
Stanley Sheinbaum
Ralph Schloming
Ira Schneck
Michael Scheider
Rev. Harry P. Schroerluke
David Scott, Sr.
Prof. John Searle
Mr. and Mrs. Nicholas Seidita
Jules Seitz
Julia Sherman
Laurence (Larry) Sherman
Gilbert (Bud) Simonson
Irving C. Smith
Eric Solomon
James Stanberry
E. R. Stephenson
Era T. Stinson
Dr. Fred Stripp
Peter A. Szego
Mrs. Carol Taube
Willie Thompson
Raul Torres
Robert Treuhaft
Elijah Turner
Mr. and Mrs. Kazuo Umemoto
Del Varela
James Vann
Eleanor Wagner
Harley Waite
Henry Waxman
Maurice Weiner
Harvey Wheeler
Rev. Cecil Williams
Rev. W. Hazaiah Williams
William J. (Bill) Williams
Marshall Windmiller
Thomas Winnett
Joe Wolf
Mr. and Mrs. Arthur Zahler
Dr. and Mrs. Isidore Ziferstein

The northern and southern California addresses for the Statewide Conference Committee were: 722 South Western Avenue, Los Angeles, and 55 Colton Street, San Francisco. The political components, as indicated on the circular, were: [15]

Growth of welfare-rights groups, neighborhood poverty councils, and other grassroots movements
Free Speech Movement
Watts uprising
Growth of Negro, Mexican-American and other independent political organizations

[15] *Ibid.*

Development of public employees' unions
Antiwar demonstrations
Dramatic showings of peace candidates in the California primary
Reaction to the right.

The agenda for September 30 included:

Julian Bond, keynote speaker, and issues keynoters as follows:

Dave Scott and Richard Calderon, minority rights
Eason Monroe, civil liberties
David Harris (tentative), youth rights
Opal Jones, poverty
Dolores Huerta (tentative), labor.

October 1, the discussion group keynoter was Bert Corona. In the afternoon, issues action workshops were held on the following subjects:

1. American foreign policy
2. Vietnam and domestic problems
3. Alternative solutions to the war
4. Black power and ghetto problems
5. Poverty program
6. Guaranteed income and welfare right
7. Farm labor and the farmworkers' strike etc.[16]

The *Communique for New Politics,* October 17, in reporting the Los Angeles conference termed it a "third force" movement. Bob Avakian reported phases of the conference under the heading, "Need Declaration of Independence," and quoted a speaker as urging the left, new and old, to repudiate both the Democratic incumbent, Governor Brown, and his Republican opponent, Ronald Reagan. Professor J. B. Neilands, University of California, Berkeley, who later cemented his ties more closely with the Community for New Politics, wrote on "A Feasibility Study for New Politics" in the same issue of *Communique.*

Following the conference, the organization, Californians for Liberal Representation (CLR) stated that it

[16] *Ibid.*

was "continuing its commitment to serve as an information pool and communications center" during the interim period before the "third force" political organization became a reality. The new address of CLR is the same as that of the northern office of the Statewide Conference, 55 Colton Street, San Francisco.

The Steering and Planning Committees (to bring about the third political party, or "force") were named as:[17]

Simon Casady
Don Rothenberg
Robert Scheer
Mark Comfort
Juanita Barnes
Danny Gray
Mike Hannon
Irving Sarnoff
Marilyn Harris
Carol Powell
Mrs. Leautice Lewis (*sic*)
Catherine Himes
John Bernstein
Fredricka Kushner
Cece McGowan
Lisa Keahey
Dick Miller
Stanley Sheinbaum
Malcolm Burnstein
Ramon Ponce
René Menez
Irwin Sperber
Clay Carson
Michael Shute
Jack Weinberg
Jim Holland
Marcus Rickards
Jan Glading
Evelyn Knight
Felix and/or Elena Greene
Wayne Mercer
Willie Thompson
Jim Berland
Phil Drath
Jim Vann
Dick Calderon
Sandra Baltimore
Edward Keating
Elijah Turner
Bob Avakian
Harvey Wheeler
Carl Bloice
Charles Collier
David Williams
Ralph Williams
Judith Graham
Mary Hernandez
Farrel Broslawsky
Philip Lewis
Flora Chavez
Josh Gould
Michael Marcus
Dave Landy
Susan Kidder
Vivian Romero
John Haag
Thelma Smith
Mary Mahon
Mary Clarke
Adele and Newton Casper

We are not implying that the Statewide Conference or its supporters were subversive. The direction it took, that is, toward the "third force movement" was in accord with the Communist Party line, as shown in our quotations from the *New Program of the Communist Party, U.S.A., A Draft,* and from decisions at the June 1966 national convention. See Exhibit I, translation of the *Pravda* article in the Delano grape strike

[17] *Communique for New Politics,* Oct. 17, 1966.

section. We realize that many sincere liberals believe that it is possible to work harmoniously with Communists; also, many refuse to believe that people with whom they have associated amicably are secret Communist Party members, that is, until they come into disagreement with them. Communist Party members who are under discipline to perform certain work cannot be swayed from their goals with arguments, and they have no true friends. They turn quickly and viciously on close associates or even members of their own family, whenever there is a choice between personal relationship and the Communist objective.

As a matter of fact, there is a hint of some disagreements within the relationships in CLR and CNP, as indicated in an article that appears in the November 21 issue of *Communique for New Politics,* page 1:

> "Northern Calif. CNP Sees Possible Nationwide Base
>
> "Reflecting on election day and assessing its significance, members of the northern California branch of California Community for New Politics (CCNP) at their meeting November 12 in San Francisco tended to objectify the results as follows:
>
> "Some ground has been lost . . . through groups of adherents disaffected at and since Los Angeles [the statewide conference—ed.] . . . all the necessary foundations remain for a successful New Politics movement statewide, maybe even nationwide. Three or four central questions emerge: 1. What is the issues program around which the New Politics can rally significant numbers of people? 2. What local candidates around the state can we focus on to implement this issues program? 3. How do we organize the people around this issues program?
>
> "Posed chiefly by Don Rothenberg of CLR, these concerns were echoed in statements made by Elena (Mrs. Felix) Greene, Charles Collier of Welfare Rights, John Bernstein, Jim Vann, Carol Powell, Ed Vickery, Bob Avakian and Jan Glading . . ."

Further in the article we find the phrase: "Key to recapturing the thrust of these groups . . . Bob Scheer's

work was too little and too late to salvage the disenchanted . . . ," and the article, by Jan Glading, concludes:

> "The CDC (California Democratic Council), CLR and CCNP (California Community for New Politics) may all need to reassess the value of independent existence in the light of the very real absence of response from the Negro community, labor, farm labor and welfare organizations. This, at least, is one sobering thought occurring to many in the wake of November 8."

Dissension in political groups is common; therefore, it is impossible to assess the foregoing as evidence of any one factor. But experience has shown that attempts by a Communist Party "fraction" within an organization to direct it frequently results in dissension and splits. Hence the often-used statement that Communists must "rule or ruin."

Before proceeding with another topic, we should point out here that Robert Scheer, while remaining in the Community for New Politics and appearing at campaign rallies, especially on the university campus, had become managing editor of *Ramparts* magazine, and had spoken under that aegis. He appeared at a rally on Sproul Hall steps at the university on February 6, 1967, launching the campaign for CNP candidates, urging students to do precinct work, and so on. His slogan for the campaign, as shown on the handbill announcing the rally, was: "Don't Drop Out—Take Over.[18]

Berkeley Municipal Elections

The Community for New Politics (CNP) whittled out a set of liberal planks for its platform in the Berkeley Municipal Elections scheduled for April 4, 1967. Besides the usual list of civic reforms, the platform called for the establishment of a Police Affairs Board, which would "limit the actions of Birchers" on the Berkeley Police force, convert the Red Squad into an "antidiscrimination" squad and reduce "police hostility" to Berkeley "citizens." [19]

[18] From handbill obtained on Berkeley campus Feb. 16, 1967.
[19] *Communique for New Politics*, Jan. 9, 1967.

At its January 12, 1967, meeting, a slate of candidates was chosen. For city council, Professor J. B. Neilands, Robert Avakian and Howard Harawitz received the official endorsement to run on the CNP platform. Rev. Hazaiah Williams, who had been appointed to a seat on the board of education, was endorsed to run for that office, and, for city auditor, Robert Kaldenbach was selected. Jack Kurzweil, Bettina Aptheker's husband, nominated Howard Harawitz, "citing his excellent work —together with his wife, Elly—in setting up the Welfare Rights Organization, which is now statewide."

The Community for New Politics did not put up a candidate for mayor despite the fact that Jerry Rubin, who filed as an independent candidate, had been a campaign worker for Robert Scheer and was in the same camp as those in the CNP. It appears that Rubin had jumped an ideological fence and gotten into a field too extreme for CNP. In a letter to the *San Francisco Chronicle* dated March 30, 1967, he made an attempt to amalgamate his position with that of the CNP:

> "The left in Berkeley has developed to the extent that it is now a serious force. I am running as an independent candidate for Mayor, and I believe that I will make a strong showing, perhaps even win. The Community for New Politics, an outgrowth of the enormously successful Scheer for Congress campaign, is running three candidates . . .
>
> "Their chances are excellent . . ."

In an elaborate and expensive 24-page brochure with an art cover, the 28-year-old Jerry Rubin, presented himself as a serious albeit a shaggy and "casual" candidate for Mayor of Berkeley. His platform, at a glance, as summed up on the back cover of his brochure was:

"Withdraw troops from Vietnam
Fight poverty
Lower rents
Low-cost public housing
Control the police
Oppose capital punishment
Jobs for the unemployed
No tuition

18-year-olds should vote
Legalize marijuana
Turn Telegraph Avenue into a mall
Plant trees and flowers
End tracking in the schools."

He explained the "track system" in schools as a method of dividing pupils into "tracks" according to their IQ tests, which he claimed was discriminatory because "In Garfield Junior High School, 90 percent of the students in the high track are white; 90 percent of those in the lowest tracks are black."

On page 8 of his pamphlet, he attacked the draft and proposed the "abolition of the draft and all proposed forms of national conscription . . . The City should form a Berkeley Antidraft Union . . ." Also, he called (page 7) for the recognition of Communist China by the United States.[20]

In his sworn statement filed with the Berkeley City Clerk February 9, 1967, Rubin listed the following residents of Berkeley as his endorsers:

Max Scherr, 2421 Oregon Street [publisher of *Berkeley Barb*—ed.]
Gerald Rosenfield, M.D., 1610 Grove Street
Jamie Huberman, 2136 Ward
Patricia Iiyama, 1929 Berkeley Way
Leo S. Bach, 1901 Grant [owner, Berkeley Free Press—ed.]
Peter B. Neufeld, 1529 Carleton Street
George A. Kauffman, 2804 Cherry Street [writer for *Berkeley Barb*—ed.]
Michael A. Miller, 3048 Deakin Street
Karen Lieberman Wald, 2236-A Roosevelt
Ivan Kramer, 2632 Regent Street
Marilyn Rae Mundy, 2623 Benvenue
Cornelius P. Jones, 2701 Benvenue
Michael James Smith, 2512 Regent Street
Robert Fitch, 2520 Telegraph Avenue
Michael Delacour, 2507 Dwight Way
Michael P. Lerner, 2546 Haste Street

[20] *For Mayor of Berkeley,* Jerry Rubin, 2502 Telegraph Avenue, 2632 Regent Street, Berkeley, 1967.

Steven Hamilton, 2502 Telegraph Avenue [Progressive Labor Party—ed.]
James A. Schreiber, 2446 Ashby Avenue
Stewart E. Albert, 1930-A Blake Street
Robert Hurwitt, 1 Panoramic Way [21]

A number of these persons were active in FSM, and the Vietnam Day Committee. Michael Smith, Steve Hamilton and Stewart Albert were arrested with Rubin at the sit-in around the Navy recruiting table on the university campus November 30, 1966. What is considerably more interesting, however, is the fact that Rubin, who admitted in his biographical sketch in the aforementioned campaign brochure (page 24) that he had visited Cuba in the summer of 1964, aligned himself with two established pro-Maoists, Stewart Albert and Steve Hamilton. This fact alone could alienate him from the more sensitive elements of the pro-Moscow Communists and their following, and put him "out of bounds" for any group dominated by them. While New Left coalitions frequently include Communists of all faiths, as did the Vietnam Day Committee, there eventually comes a time when each group feels it must go its separate way. That is the reason those *ad hoc* organizations usually fall apart soon after the committee's function has been performed.

People who do not understand the psychology of the Communist movement are generally bewildered by the fact that it is divided into sects, and that often the warfare between the sects is bitter and bruising. There are two more cases of this sectarianism which are more clearly defined than the case of Jerry Rubin.

Socialist Workers Party (Trotskyist) Candidates

In the Berkeley municipal elections of April 4, 1967, we observed a four-way split among leftist candidates. One backed by the Community for New Politics, one by the Socialist Workers Party, Jerry Rubin's group, and another from a small radical group.

The Socialist Workers Party, or the Trotskyist Communists, entered the campaign with candidates: Peter Camejo, a subversive employee of the university who quit his position in September of 1966 with the avowed

[21] *Official Voters Handbook*, Berkeley, Spring, 1967.

purpose of enrolling as a student, and did enroll as a history major in the university. That was despite the fact that he had been carrying on a campaign of harassment, having filed a suit against the university and the board of regents in the name of the Vietnam Day Committee after it had been excluded from the campus for breaking rules. He was a candidate for Mayor of Berkeley. Other SWP candidates were Jaimey Allen, Ove Aspoy and Brian Shannon for city council, and Ernest Erlbeck for board of education. Paul Montauk, another SWP member, announced he would run for Mayor of Oakland.

Camejo's sectarian bitterness against Scheer's Community for New Politics spilled over in an article he wrote for the *Berkeley Barb* of January 13, 1967, in which he referred to it as "Community for Old Politics," and criticized it for not being aggressive enough, for sly whispering instead of "speaking out." This, we might comment, is but a continuation of the quarrel which has raged between Communists of the Fourth International (Trotskyists) and Communists of the Third International (pro-Moscow, formerly pro-Stalin), since the split between Trotsky and Stalin in the late 1920's. In his sworn statement Camejo revealed quite clearly that one of his reasons for becoming a candidate was to obtain a forum to propagandize. For instance, in his statement he said:

> "The present mayor and city council [of Berkeley] have gone on record in support of the brutal, racist war in Vietnam . . . A wealthy few profit from war, racism and exploitation. They control the Democratic and Republican Parties. Their politicians should be replaced by a government representing the workers, Negroes and other minorities . . ."

His endorsers (residents of Berkeley) were named as:

Clare M. Fraenzl, 2224-A Blake Street
Edmond E. di Tullio, 2236-D Roosevelt Avenue
Helena Hermes, 1905 Henry Street
Roger J. Filene, 1523-B Josephine Street
Lee T. Stockman, Jr., 2325 Woolsey Street
Cathleen A. Keller, 2525 Dwight Way
Halket Allen, 1926½ Channing Way
(Official records, Berkeley.)

Camejo stated in the Socialist Workers Party election folder, Exhibit IV, that he was 27, former national secretary of the Young Socialist Alliance and at that time an organizer for the Socialist Workers Party. If there is ever a doubt about his subversive connections, they are to be found here as his own admission. The Socialist Workers Party and its youth group, the Young Socialist Alliance, are subversive organizations.

Brian Shannon, 30, SWP candidate for councilman, boasted in the campaign brochure that he had been arrested at the Sheraton-Palace Hotel sit-in (1963) and said he worked at the Steppenwolf (Exhibit IV), where Mario Savio was a bartender. He listed the same set of endorsers Camejo used, and his sworn statement read in part:

> "I agree that even the most 'liberal' representatives of the Democrat and Republican Parties offer no solution and have no real interest in solving the problems of the working people: war, inflation, deflation, racism, unemployment, poverty . . ."

Ove Aspoy, 21, member of the Young Socialist Alliance, worked as a laboratory assistant and was a member of the Oil, Chemical and Atomic Workers Union. He was a Socialist Workers Party candidate for councilman. His sworn statement included a clause on his support of "labor's fight against inflation."

Jaimey Allen, 23, a music teacher and member of the Young Socialist Alliance, was arrested at the Sheraton Palace and Auto Row demonstrations in San Francisco, and had headed a defendants committee for those arrested; she was also a founding member of the Berkeley Vietnam Day Committee. (Exhibit IV.) In early 1966 she was a leader of a women's march on the Oakland Draft Board protesting the Vietnam war. Her endorsers were the same as those of others of the SWP.

Ernest B. Erlbeck, 27, SWP candidate for Berkeley School Director, used the same endorsers. He stated: "I run a nonprofit book store . . . in order to make available books and pamphlets on Negro and labor history . . ." [22] He referred to Pioneer Books, the Trotskyist

[22] *Ibid.*

book store, 2003 Milvia Street, Berkeley, in the same building which housed the Vietnam Day Committee (2001 Milvia Street, Berkeley) at the time it was under the Socialist Workers Party.

Another candidate for city council was Geoffrey W. White, a leader of the Bay Area Spartacist League. This organization takes its name from the old Spartacus Bund, which was all but wiped out in the 1919 Berlin revolutionary attempt. It was then led by Rosa Luxemburg and Karl Liebknecht, who clung to the remnants of the First International founded by Karl Marx, and through which Lenin was attracted to Communism.[23]

White's endorsers, or following, included Suzanne Mattingly, 1422 Milvia Street. This is interesting in casting some light on the warfare between some of the Marxist groups in the bay area. The Spartacist League is a purification split-off from the Trotskyist Socialist Workers Party, and Sue Mattingly has been named as one of the disputants. There are, no doubt, other disenchanted Trotskyists in White's group; and many Trotskyists are, in turn, disenchanted members of the Moscow-oriented Communist Party. At present there is no group to the left of the Spartacist League into which any of its disenchanted can drift. To the layman, this Marxist hairsplitting must seem ridiculous, but it is deadly serious, and, indeed, sometimes deadly, to those "intellectuals" who accept Marxism as their religion.

Community for New Politics (CNP) Candidates

The candidates offered by Community for New Politics kept their statements more in line with what might appeal to uncommitted liberals, despite the strong Communist flavor that was carried into the campaign by such close associates of the Communist Party as Brownlee Shirek, Professor Leon Wofsy, Malcolm Burnstein, Dr. Ephriam Kahn, Brian O'Brien, and Elly Harawitz, and with such identified Communists as Don Rothenberg, Robert Treuhaft and Malvina Reynolds.[24]

[23] *Lenin, The Compulsory Revolutionary*, by Stefan Possony, Henry Regnery Co., N.Y., 1964.

[24] Re: Shirek, see 1951 report, p. 234; re: Prof. Leon Wofsy, see 1965 report, pp. 58–62 and 114; also, 1966 supplementary report, pp. 23, 25, 64–71, 79 and 99.

Following the first announcement of candidates, CNP also endorsed Ronald Dellums for city council in Berkeley and Elijah Turner for city council in Oakland. The personal endorsers of these candidates is informative. Robert J. Kaldenbach, for example, was endorsed by the following Berkeley residents:

Evelyn Johnson, 1613 Acton Street
Ephriam Kahn, M.D., 2709 Claremont Boulevard
J. B. Neilands (a candidate), 185 Hill Road
Howard Harawitz (a candidate), 1830 Derby Street
Anne (Mrs. Robert) Scheer, 1104 High Court
Thomas Winnett, 975 Miller Avenue
Jeffrey Schevitz, 1734 Hearst Avenue
Jack Weinberg, 1945 Stuart Street
Robert Atkins (American Federation of Teachers, Local 1570, University Teaching Assistants), 2217-A Stuart Street.

Rev. W. Hazaiah Williams, candidate for School Superintendent, remained in the liberal field and did not dip into the CNP pool of endorsers.

Robert Avakian, CNP candidate for city council, was one of the Sproul Hall arrestees,[25] and had been an activist on the Berkeley campus during the Vietnam Day Committee and other radical demonstrations. He was also active in the Campus Community for Scheer,[26] and also wrote an article for the *Berkeley Barb* of January 27, 1967, stating that the Community for New Politics meet specifications for "the revolutionary Marxist vanguard party." His Berkeley endorsers were:

LaVerda C. Allen, 1049 Euclid
Eric Anderson, 1239 Carlotta
Mrs. Ruth W. Avakian, 911 Oxford
Matthew A. Baggett, Jr., 1953 Derby
Nancy Bardacke, 1945-A Delaware
Richard W. Broadhead, 2214 Russell
Frank Daar, 2421 Prince
Mrs. Elly M. Harawitz, 1830 Derby
Evelyn Johnson, 1613 Acton
Ephriam Kahn, M.D., 2709 Claremont
J. B. Neilands, 185 Hill Road

[25] Official records.
[26] Handbill for Rally, May 2, 1966.

Harry Rubin, 1170 Sterling (same address as Prof. Rubin, U. C.)
Anne Weills Scheer (Mrs. Robert Scheer), 1104 High Court
Brownlee W. Shirek, 2705 Walker
Jack L. Weinberg, 1945 Stuart
Palmer D. Whited, 1673 Chestnut
W. Hazaiah Williams, 1611 Dwight
Thomas Winnett, 975 Miller
Toni Vincent, 2537 Fulton
Robert Atkins, 2217-A Stuart

Ronald V. Dellums, like Rev. Hazaiah Williams, stayed in the liberal field, and his endorsers are of no interest to us.

Howard A. Harawitz, mentioned several times previously in this report, who was recommended as a CNP candidate by Bettina Aptheker's husband, Jack Kurzweil, was a member of the Berkeley Board of the Economic Opportunity Organization, a War on Poverty group, federally financed.[27] Harawitz received considerable attention in local newspapers, notably over an anti-war billboard which the outdoor advertising company considered treasonable and painted over after the billboard was put up. The offending words, "Oppose the war" were replaced after a legal skirmish, and allowed to remain, but Harawitz got free time as "news" on local TV news programs to expound his cause.

The following were named as his Berkeley endorsers:

Babbette Chamberlain, 656 Santa Barbara Road
Frank Daar, 2421 Prince Street
Anne Deirup, 1629 Josephine Street
Mable D. Howard, 3219 Ellis Street
Evelyn Johnson, 1613 Acton Street
Ephraim Kahn, M.D., 2709 Claremont Boulevard
Joan H. Kip (Mrs. Arthur F.), 775 San Diego Road
Helen D. Nestor, 180 Montrose Road
Annie "Anita" Ramos, 2115 9th Street
Harry Rubin, 1170 Sterling Avenue (see Avakian sponsor by this name)
Anne Weills Scheer, 1104 High Court
Robert B. Avakian, 1211 Evelyn

[27] *People's World*, January 21, 1967.

Brownlee W. Shirek, 2705 Walker Street
Maudelle M. Shirek, 2705 Walker Street
Toni Vincent, 2537 Fulton Street
Jack L. Weinberg, 1945 Stuart Street
Thomas Winnett, 975 Miller Avenue
Fredricka Terr Kushner, 2436 Prince Street
Howard Jeter, 2112 Ashby Avenue
Robert Atkins, 2217-A Stuart Avenue.[28]

Probably the most important CNP candidate was University of California Professor J. B. Neilands, president of Local 1474, American Federation of Teachers (AFL-CIO) on the Berkeley Campus, the local for faculty members. Professor Neilands, biochemistry, had been active with the antiwar group on the campus for some time, and was one of the Faculty Peace Committee and a sponsor of the Spring Mobilization Committee, as well as a member of the East Bay Trade Unionists for Peace. (Exhibit V.)

Neilands made a trip to North Vietnam as a member of Bertrand Russell's International War Crimes Tribunal, and upon his return late in March 1967 he told the findings of the five-member group of which he was a member at a meeting on the Berkeley campus. Prior to the meeting, he said in an interview with the *Daily Californian,* March 29, 1967, that they turned up evidence of "deliberate and systematic destruction of schools, hospitals and civilian life from U.S. bombing in North Vietnam." He violently attacked a statement made by President Johnson that "We have never deliberately bombed cities nor attacked any target with the purpose of inflicting civilian casualties." Neilands stated: "The President is either ignorant or is deliberately falsifying the record." He said his team found "massive, documented evidence of antipersonnel weapons." He also told of his meeting with President Ho Chi Minh and Premier Pham Van Dong on March 17, 1967. He thought the Communist Premier was "kindly, friendly and unassuming and made a joke easily."

[28] *Official Voters Handbook*, Berkeley, Spring, 1967.

Neilands brought back to United States a "greeting" from Ho Chi Minh:

> "Hello. This is your Uncle Ho speaking to our friends in the United States. We send you our best greetings and extend our support for your just cause. Tell the American people we feel friendly toward them. We feel that they have been deceived by their leaders."

Neilands concluded by saying that he is aware of the fact that he "committed civil disobedience" by going to North Vietnam and that he is willing to accept whatever punishment is inflicted on him. This was in reference to the State Department's prohibition of travel to North Vietnam.[29]

The *Daily Californian* of April 3, 1967 (the day before the municipal election), ran a half-page advertisement, "Who's behind the CNP—We are!" which carried statements of three persons in support of the CNP program and candidates: Robert Scheer: "The CNP is a coalition of the thousands of people in this community who are determined to stop the insane war in Vietnam . . . The CNP candidates are committed to developing and maintaining a community based movement which will determine its own program. Their success would demonstrate to the rest of the nation that new politics can be made to work."

Mario Savio said: ". . . In every election we are forced to 'choose' between rival factions of the same ruling elite. Those whose rage will not permit such humiliation either abstain or write in a protest candidate who is sure to lose . . . In time we may succeed, if only we have the courage to vote with our heads—and our hearts."

Jack Weinberg's message was: "The CNP is an ongoing community organization . . ."

The endorsers of the program and slate of candidates from the university community were:

American Federation of Teachers, Local 1570
East Bay Friends of SNCC
Women for Peace
Robert Atkins, President AFT Local 1570

[29] *Daily Californian*, March 29, 1967.

Prof. Albert Bendich
James Petras
Prof. Morris Hirsch
Prof. Jonathan Middlebrook
Prof. Masao Miyoshi
Prof. Harry Rubin
Prof. Peter Scott
Prof. Norman Rabkin
Prof. Stephen Smale
Prof. Richard Strohman
Dr. Fred Stripp
Prof. Robert Tracy
Prof. Leon Wofsy.

In an apparent effort to capture the "hippie" vote, a full-page ad was run in the *Berkeley Barb* on March 31, 1967, page 11, advertising their candidates: Robert Avakian, Ron Dellums, Howard Harawitz, J. B. Neilands, Bert Kaldenbach and Hazaiah Williams.

The ad read:

> "It's time to stop the bulls—t of the cold war. This country has been in the grips of hysterical anti-communism for 20 years. This hysteria has been responsible for McCarthyism, FBI harrassment, CIA intrusion into domestic institutions and the insane and reactionary foreign policy which produced the war in Vietnam. A rational approach to Communism and revolution is a prerequisite to a peaceful world.
>
> "The CNP refuses to practice guilt by association or red-baiting. We welcome as members all who will work for an end to the Vietnam war, conversion of our war economy to peaceful production, a solution to the critical domestic problems of racism and poverty and unemployment, and the development of a more democratic society . . ." (Exhibit VI.)

It is disturbing that Berkeley faculty members would allow their names to appear as sponsors for this advertisement that was in such vulgar language and bad taste, regardless of their sentiments as to its basic content. But the names of Professors Stephen Smale, Harry Rubin, Richard Strohman, Morris Hirsch and Al Bendich, together with Robert Scheer, Doug Hill, Jack Weinberg,

Robert Treuhaft, Allan Temko, Malvina Reynolds and Mario Savio appeared as signers. The same issue of the *Berkeley Barb* printed an obscene cartoon about the election in the form of another full-page ad on page 13: "WRITE-IN bill miller," with a rear-view picture of him in the nude with a list of obviously fictitious endorsers.

Another attempt to show contempt for the election was seen in the antics of Charlie (Brown) Artman, who filed a statement declaring his candidacy for councilman. The picture he gave to the city clerk showed him wrapped in a blanket, a band holding back his long hair. He was smoking a peace pipe, and stated his occupation as that of a priest.[30] He received considerable publicity in the local press, perhaps too much, when he claimed to carry marijuana and a supply of LSD in a large cross that dangled from his neck. The police decided to investigate the claim, and arrested him shortly before the election. He entered a plea of not guilty, and withdrew his candidacy.[31]

Tabulation of the votes showed the following results of the April 4 Berkeley municipal election:

Mayor

Johnson (Incumbent)	25,224
Rubin	7,385
Huntley (Birch Society)	2,160
Camejo	1,019

Auditor

Sibley	28,112
Erlbeck	4,517

School Director (two)

Grossberg	26,484
Williams (CNP candidate)	25,536
Lee	8,638

School Director

Nelson	25,359
Pearce	8,172

City Council (four)

Bort	21,494
May	20,522
De Bonis	18,817
Dellums CNP	17,171
Price	15,312
Neilands CNP	10,876
Avakian CNP	10,490
Harawitz CNP	8,025
Schary	4,796
Darden	3,129
Berns	2,512
Allen SWP	1,414
Artman	1,148
Shannon SWP	903
White Spartacist	869
Aspoy SWP[32]	560

[30] *Official Voter's Handbook,* Berkeley, Spring, 1967.
[31] *San Francisco Chronicle,* March 30, and April 4, 1967.
[32] *Oakland Tribune,* April 5, 1967.

Some of the CNP candidates made an enviable showing, especially Professor Neilands, Avakian and Harawitz, and no doubt the results will be interpreted by the New Left as acceptance of their program throughout liberal circles.

We have scarcely mentioned the "left" candidates for the April 18 Oakland City election, but there the leftists made little headway. Elijah Turner, Negro leader previously mentioned and a candidate for city council, carried the CNP endorsement.[33] Paul Montauk, Socialist Workers Party candidate for mayor, was a former editor of the *Vietnam Day News,* and organizer for the SWP.[34] Curtis Lee Baker, city council candidate, has a record of juvenile offenses, and a 1961 conviction for molesting an eight-year-old child.[35] The Community for New Politics ignored him.

Results of the election gave Paul Montauk 3,147 votes for mayor, Curtis Lee Baker 3,824 votes for the council, and Elijah Turner, candidate at large for city council, 12,551 votes.[36]

At the statewide conference in Los Angeles in the fall of 1966, a group calling itself the Southern Community for New Politics emerged, but little was heard from it. One of its representatives, Danny Gray, was scheduled to participate in the Black Power Conference on the Berkeley campus October 28–29, 1966.[37] A California Coordinating Committee for New Politics, which may incorporate the Los Angeles unit, was established in September 1966. Based at Venice, it issued a call for a statewide convention to be held in the bay area May 13–14, 1967, to formulate plans for the 1968 elections. The Community for New Politics was listed on the call as one of the cooperating groups. (Exhibit VII.)

There is no question that the advent of the so-called "New Left" has changed the nation's political picture. It has shaken the "Old Left" severely. Both the Communist Party and the Socialist Workers Party have made tremendous efforts to capture the easily influenced

[33] *Communique for New Politics,* March 6, 1967.
[34] *National Review,* December 14, 1965.
[35] *Oakland Tribune,* April 3, 1967.
[36] *Oakland Tribune,* April 19, 1967.
[37] *Daily Californian,* October 28, 1966.

mass of young people. At this writing, it appears that the Communist Party has been successful to a degree, and the situation bears close watching during the next few years. However, there are indications that the anarchist New Left groups, wishing to consider issues of the moment rather than long-range goals, may throw off the Communist Party's spartan discipline and rigid program of catering to the needs of the Soviet Union. The CPUSA is in a state of flux, but its tacticians have had long experience in baiting traps not only for the unwary, but for the wary as well. The New Left groups are inexperienced, and it remains to be seen how many of its organizations and individuals fall under the influence of the Old Left.

VIRGINIA TAYLOR NORRIS

In our 1965 report at page 71, and in our 1966 report at pages 32 and 33, we discussed the background of a Virginia Marie Taylor, an employee of the University of California at Berkeley. The essence of our statements dealt with her two years of classes at the Communist school in San Francisco, her connection with a Communist youth organization known as American Youth for Democracy, and a Communist front organization known as International Student Service.

Immediately after publication of the 1965 report, we received a letter from Mrs. Virginia Marie Norris (nee Taylor), which is printed below. She was advised that such statements are required to be made under oath. Nothing further was heard from her until almost a year later, and a few days after the 1966 report had been printed. We then received a second letter, duly notarized, with a copy of the first letter also notarized. Senator Burns informed her on May 18, 1966, that both letters would be reproduced in our 1967 report.

The letter dated June 18, 1965 reads as follows:

50 Parnassus Road
Berkeley, California
June 18, 1965

Honorable Hugh M. Burns
President Pro Tem
State Senate
Capitol Building
Sacramento, California

Dear Senator Burns:

Oral reports have reached me of the statement made about Virginia Marie Taylor in the latest report of the Senate Fact Finding Subcommittee on Un-American Activities.

My maiden name was Virginia Marie Taylor, but I have been married for twelve years and have used my married name, Mrs. Frank Norris, since my marriage in 1953. We have two children, Barbara, 9, and Scott, 2, and live at 50 Parnassus Road, Berkeley. The report apparently summarizes my academic activities at the University of Washington but omits the fact that I served as President of the ASUW (Associated Students of the U. of W.) in my senior year. Perhaps student body presidencies, marriage and motherhood do not fit the image the Committee wished to convey.

American Youth for Democracy -- I was not a member of this organization. I attended a meeting, while ASUW President, so as to see what this new organization of students was all about and to hear speeches by the Seattle election candidates.

International Student Service -- I am unaware of any connection between this organization and the "American Youth Conference." The ISS Summer Institute I attended was held in New Brunswick, at Campobello, the summer home of then-President Franklin D. Roosevelt, who made it available to the group. The speakers included Mrs. Roosevelt, Dr. Hu Shih, Nationalist China's wartime ambassador to the United States, officials of the War Production Board and other government agencies, the presidents of Hunter and Smith Colleges and Howard University, Dr. Harlow Shapley, head of the Harvard Observatory, and such other distinguished academic speakers as Robert MacIver, Douglas Moore and Jacques Barzun.

Later that same summer (1942) ISS sponsored an International Student Assembly in Washington, D.C., which I attended, with some 400 students from 50 countries. The chief speaker was President Roosevelt. Other speakers included Mrs. Roosevelt, U.S. Supreme Court Justice Robert Jackson, New Zealand Minister Walter Nash, Dr. Hu Shih, and Count Carlo Sforza of the Free Italian government. The entire student delegation, myself included, was entertained at a party at the White House.

Secretary of Academic Senate -- This is an obvious error. The organization was the Academic Assembly, a group of junior academic employees at the University paralleling the Academic Senate for more senior employees. It was organized to help raise funds for junior persons who had lost their positions as a result of the oath controversy, just as the Senate was similarly raising funds for senior persons so injured. The organization declined as the need disappeared or was otherwise solved by the Court decision, and was no longer in existence when I filled out my security questionnaire. If I omitted to list it, the omission was sheer inadvertence as the group was not political or suspicious in any way. I probably did not list other past organization ties such as Camp Fire Girls and a host of high school and college groups that appeared irrelevant.

Ceramics class -- This was an occasional evening class at the California Labor School. I chose it because it was inexpensive and had its own kiln and chemicals for making glazes. Most other comparable classes sent work out to be fired and used pre-mixed glazes. There was no political activity whatever in the class. The students exhibited no political interests that I knew of. The one I recall most vividly was a dentist, who kept making large clay teeth.

It is sad to realize that these denials and corrections will disappear with today's newspapers, while the errors and insinuations will be perpetuated in official state records. It is also unfortunate that denials and corrections make one appear defensive and apologetic. I am neither. I have no reason to be. Nor would I wish it to appear that my past activities, as corrected, were an instance of youthful folly. I have continued to be reasonably active politically. I have signed petitions, worked for political candidates, joined an occasional picket line, contributed to civil rights organizations. In other words, I have continued to exercise my rights and responsibilities as an American citizen. I plan to continue to do so.

It is requested that this letter be printed in the Senate Journal and that copies of it be sent to all who received or will receive copies of the Committee report.

Sincerely yours,

Virginia M. Norris

Virginia M. Norris

cc: Copies to Editors
of local newspapers

Subscribed and sworn to before me this 6th day of May, 1966.

Betty Roberts

BETTY ROBERTS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
ALAMEDA COUNTY

My Commission Expires September 29, 1968

The letter dated May 6, 1966, reads as follows:

50 Parnassus Road
Berkeley, California
May 6, 1966

Honorable Senator Hugh Burns
President Pro Tem
State Senate
Capitol Building
Sacramento, California

Dear Senator Burns:

I am shocked to discover that your new Un-American Activities report fails to print, even in an appendix, the letter I submitted last June correcting errors about me in your 1965 report.

This omission, of course, made it possible for the new report to ignore or to paraphrase and distort my corrections. For example, the report says I "admitted" attending a conference at which Mrs. Roosevelt and "other non-Communist liberals" appeared. These "other" speakers were specifically named in my letter as including President Franklin D. Roosevelt, United States Supreme Court Justice Robert Jackson, Nationalist Chinese Ambassador Dr. Hu Shih, New Zealand Minister Walter Nash, and Count Carlo Sforza of the Free Italian Government.

My letter flatly denied your allegation that I was a member of the American Youth for Democracy. This denial and correction does not appear anywhere in the new report.

You now offer to publish in your 1967 report a sworn statement if I wish to make one. I had intended my earlier letter for publication in the present report. It never occurred to me that my word and my signature were not acceptable at face value. I would have been happy to swear to the contents of the letter had the Committee ever made such a request at any time in the ten months since I sent it.

In any case, I have now sworn to the truth of the contents of both my earlier letter and this one, and I request that both these notarized letters be included in the final bound copies of the present report.

Sincerely yours,

Virginia M. Norris

Virginia M. Norris
(Mrs. Frank D. Norris)

Registered - Special Delivery

Subscribed and sworn to before me this 6th day of May, 1966.

Betty Roberts

BETTY ROBERTS
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
ALAMEDA COUNTY

My Commission Expires September 29, 1968

Our 1966 report, on pages 32 and 33, stated that Mrs. Norris had attended the Communist School (California Labor School) in San Francisco for two years, and that in her personnel security questionnaire filed with the university, this information had been added by a typewritten addendum. We also pointed out that she had been a delegate to the International Student Service organization while she was a student at the University of Washington. The International Student Service was a component part of the American Youth Congress, which was controlled by the Communist Party. The official delegate from International Student Service to the American Youth Congress, Harper Poulson, had become a Communist four years previously, and after he left the party he so testified.[1] The Communist character of the American Youth Congress, as we pointed out, is easily established through statements issued by the party press, and through statements of its former National Secretary, Joseph P. Lash.[2]

We have stated in the prior reports, and we repeat here, that we assume Mrs. Norris had no knowledge of the sort of organization whose meeting she attended as a delegate. It was a front, and one of the prime purposes of a front is to conceal the Communist control from its non-Communist members. The fact that Mrs. Roosevelt and other non-Communists attended would not be sufficient to purify the organization. In fact, as we said in the 1966 report, Mrs. Roosevelt frankly declared she had tried working with the American Communists and found it impossible.

Mrs. Norris omitted mention of having attended meetings of American Youth for Democracy in her questionnaire. It appears from our interview with the university security officer, and from his sworn statement, that Mrs. Taylor told him she had attended *meetings* of the Communist youth organization, and not just the single meeting she specified in her letter.

We clearly stated in our 1965 report, and repeat here, that "we do not infer that Miss Taylor was a Communist or that when she filed her personnel security question-

[1] *Los Angeles Times*, October 23, 1959.

[2] See: *Daily Worker*, January 5, 1935, July 4, 1935; *HUAC*, *Appendix* IX, p. 525.

naire in 1953 she was subversive, but it is abundantly evident that she followed a pattern of activity that had been indulged in by other employees of the university in deliberately omitting from an official document concerning her employment, extremely vital and pertinent security information."[3]

The California Labor School in San Francisco, and its counterparts by the same name in southern California, were the centers for indoctrination and recruiting. That was their sole function, and they were conceived, organized and operated by the Communist Party. Its directors, its instructors, and its activities were strictly controlled by the party. Every official counter-subversive agency in the business, including the Subversive Activities Control Board that heard evidence concerning its Communist nature, found that it was under the control of the party.

One undercover FBI informant, a Communist, said of the California Labor School:

> "I spent some time around the California Labor School. That, again, is a whole other story. It is not a labor school; it doesn't teach a craft or didn't teach a craft or a trade. It didn't get a person a job. It was a place where they could get out Communist propaganda. That's all I found at the labor school. I took a course in journalism. If I had to go out in the world and make a living from what I learned there, I could never have earned any form of living. They taught interpretive dancing, ceramics, for which they were getting federal funds under the GI Bill of Rights, and they gave courses all with a real down-the-line, left-hand deal."[4]

It should also be pointed out that at the time Mrs. Norris was attending the school, classes in ceramics were being offered at San Francisco State College, which taught three courses at its campus then located at the corner of Herman and Buchanan Streets, just off Market; at San Francisco City College, 50 Phelan Avenue, which offered four courses, and by the San Francisco Adult Education Program, that offered eight courses.

[3] 1966 report, p. 72.

[4] *Testimony of Mrs. Adele Kronick Silva, HUAC*, October 20, 1959, pp. 1264, 1266, 1267, 1273, 1274, 1277–1280.

COMMUNITY FOR NEW POLITICS

EXHIBITS

Exhibit No.	*Description*
I.	National Conference for New Politics Letter (both sides)
II.	Californians for Liberal Representation—Letter (both sides)
III.	Statewide Conference on Power and Politics—folder (both sides)
IV.	Socialist Workers Party folder—six sections (both sides)
V.	Report from North Vietnam—Neilands
VI.	CNP Folder—4 sections (both sides)
VII.	California Statewide New Politics—folder—4 sections (both sides)

EXHIBIT I

NATIONAL CONFERENCE FOR NEW POLITICS

1808 WYOMING AVENUE N.W., WASHINGTON, D.C. 20009

Dear Friend:

The Vietnam war now threatens every American family. Will our sons go to war or to school? Will our tax dollars be used to wipe out slums at home or villages in Vietnam? You must help America make this decision.

The killing of Americans and Vietnamese will not stop unless the opponents of this war, and of the bankrupt foreign policy which it reflects can turn their dissent into real political power. Fortunately, across the nation, local alliances of issues oriented liberals, student activists, peace and civil rights workers, and grass-roots movements of the poor are being formed for the tangible ends of winning elections.

--In Oregon, Howard Morgan, former federal Power Commissioner, is running for the Democratic nomination for the U. S. Senate against a supporter of Administration policy in Vietnam. Morgan is supported by Senator Wayne Morse. Simultaneously, former Congressman Charles Porter, who has a distinguished record of peace activity, is running for Congress in the 4th district.

--In California, there are 30 anti-war candidates, ranging from incumbent Congressmen George Brown, Phil Burton and Don Edwards to newcomers Ed Keating, Bob Scheer and Stanley Sheinbaum of Ramparts Magazine.

--In Mississippi, Alabama, Georgia and North Carolina, Negro candidates for local office, ranging from sheriff to state assemblyman to Congressman, are awakening the energies of people long denied any share in shaping their own future, and are now reconstructing the whole of Southern politics.

--In the slums of Chicago, campaigns against the Daley machine are building from the bottom up for alderman and state assemblyman -- the offices nearest the people.

--In New York, two vigorous opponents of the war in Vietnam – Ted Weiss, reform City Councilman, and Mel Dubin, recent candidate for Controller on Congressman Ryan's ticket — are challenging incumbent Democrats who have long represented city bosses.

— In Massachusetts, Thomas Boylston Adams is leading a peace campaign for the U. S. Senate with considerable support from within the Democratic Party.

Other politically viable campaigns, equally important and promising, are building. The National Conference for New Politics has been created to assist in these developments. The Conference is not another organization established to compete with existing groups. Rather it is a cooperative effort solely to provide financial, research, and human resources to those candidates who will speak clearly for peace and for a domestic program commensurate with the great wealth of our country and the needs of its citizens.

Political campaigns are staggeringly expensive; but we are persuaded that many Americans care deeply enough about the issue of war or peace that they will make great sacrifices to insure that in the next Congress, Senators Morse and Gruening, Fulbright and Young, and the few other bold spirits no longer stand almost alone. Moreover we believe that they understand the great opportunity offered by the insurgent politics in the South and the ghettoes of the urban North and

EXHIBIT I—Continued

that they will not allow these to fail for lack of funds.

We have already helped significantly in Oregon and Alabama. However, much more is needed. Contributions are not tax-deductible, but they may be the one way in which we can realistically overcome and defeat the sense of hopelessness which the real war in Vietnam and the "half-war" on poverty both engender.

Please, now! Make your check payable to NCNP.

Sincerely,

Benjamin Spock, M.D.
Co-Chairman, SANE

Julian Bond
Representative-elect
Georgia House of Representatives

The Reverend William Sloane Coffin, Jr.
Chaplain, Yale University

Simon Casady
Past President California Democratic Council

P.S. Since we have a clear obligation to make certain that debate continues on Vietnam policy, and because the nation is as one precinct on this issue, we would hope that individuals will contribute regardless of geographical areas. The allocation of funds shall be determined by the signers of this letter in consultation with Congressional supporters and the NCNP Board.

Organizations listed for identification purposes only.

EXHIBIT II

Californians for Liberal Representation
870 Market Street • Suite 470
San Francisco, California 94102

Hear

Senator Wayne MORSE

Speaking at two public meetings
on

VIET NAM

FRIDAY, APRIL 29

- **SAN FRANCISCO — ILWU Auditorium — Beach and Taylor Streets — 8:00 P.M.**
- **OAKLAND — Oakland Auditorium Theatre — 10th and Fallon Streets — 7:30 P.M.**

Sponsored by

CALIFORNIANS FOR LIBERAL REPRESENTATION
870 Market Street • Suite 470
Phone: 392-3648

Tickets Available:

SAN FRANCISCO:
Downtown Center Box Office
S.F. State College Box Office
Mascone Headquarters
2670 Geary Blvd.— WA 2-2885
1155 Taraval — 661-1662
C.L.R. — 870 Market St. — #470

PENINSULA:
Keating Headquarters
723 Oak Grove, Menlo Park — 322-2152

MARIN:
Drath Headquarters
1131 Magnolia, Larkspur — 461-9050

EAST BAY:
ASUC Box Office
Scheer Headquarters
2214 Grove, Berkeley — 549-0690
2495 Telegraph, Berkeley — 848-0655
4529 Grove, Oakland — 658-9570
2348-40th, Oakland — 533-1166
1587 Solano, Albany — 527-1337
Miller Headquarters
3136 Grove, Berkeley — 849-0310
Comfort Headquarters
6914 Lockwood, Oakland — 569-0723

SAN JOSE:
Peace Center
235 No. 1st Street — 297-2299

($2 general admission; $10 reserved seats)

C.L.R. Endorses:

ATTORNEY GENERAL:
WILLIAM BENNETT

SECRETARY OF STATE:
WILLIAM WILLIAMS

FOR CONGRESS:
1 C.D. — PHIL DRATH
5 C.D. — PHILLIP BURTON*
7 C.D. — ROBERT SCHEER
9 C.D. — W. "DON" EDWARDS*
11 C.D. — EDWARD KEATING

STATE SENATOR 10th DIST.
GEORGE R. MOSCONE

FOR ASSEMBLY:
15 A.D. — RAY MARSH
MARK COMFORT
17 A.D. — JOHN J. MILLER
18 A.D. — WILLIE L. BROWN, JR.*
20 A.D. — JOHN L. BURTON*
25 A.D. — WILLIAM F. STANTON*

*Incumbent

VOTE JUNE 7

4-29-66

EXHIBIT II—Continued

CALIFORNIANS FOR LIBERAL REPRESENTATION

Suite 470, Flood Building • 870 Market Street • San Francisco, California 94102 • Phone: 392-3648

Franklyn K. Brann
Northern Chairman

Marshall Axelrod
Susan Bierman
Dr. Arthur K. Bierman
Joan Brann
Malcolm Burnstein
Joseph Close
George M. Cawell
Ben Ginden
Marylouise Lovett
Keith Murray
John A. O'Connell
Paul Phillips
Michael Schneider
Jules Seitz
Dr. Richard Strohman
John Thorne
Robert W. Tuttle
Marshall Windmiller
Thomas Winnett

Don Rothenberg
Northern Director
526-0210

Dear Friend:

The message is simple: there are more liberal candidates in Northern California who publicly challenge our government's policy in Viet Nam than anywhere else in the country. They need help.

The Board of the Californians for Liberal Representation has carefully checked the public record of each of these candidates on foreign and domestic policy. We are pleased now to present our endorsements: (Those marked with asterisk are incumbents seeking re-election.)

Attorney General:	Secretary of State:
William Bennett	William Williams
For Congress:	For Assembly:
1 C.D.--Phil Drath	15 A.D.--Ray Marsh
5 C.D.--Phillip Burton*	Mark Comfort
7 C.D.--Robert Scheer	17 A.D.--John J. Miller
9 C.D.--W. "Don" Edwards*	18 A.D.--Willie L. Brown, Jr.*
11 C.D.--Edward Keating	20 A.D.--John L. Burton*
	25 A.D.--William F. Stanton*
State Senator 10th Dist.:	
George R. Moscone	

You will meet most of these candidates at the two, simultaneous public meetings featuring Sen. WAYNE MORSE of Oregon on April 29th. (See enclosure.) YOU can make the difference between victory and defeat by giving your time and a generous contribution to the C.L.R. fund to support these liberal candidates.

Please fill in the enclosed card and mail it today--add money and manpower to your sentiments for peace and prosperity.

Fraternally yours,

Franklyn K. Brann
Northern Chairman

P.S. You can, at the same time, order your tickets for the Morse Meeting--two dollars each. Those contributing ten dollars or more to the C.L.R. Candidates Fund receive a reserved seat.

EXHIBIT III

Statewide Conference

ON

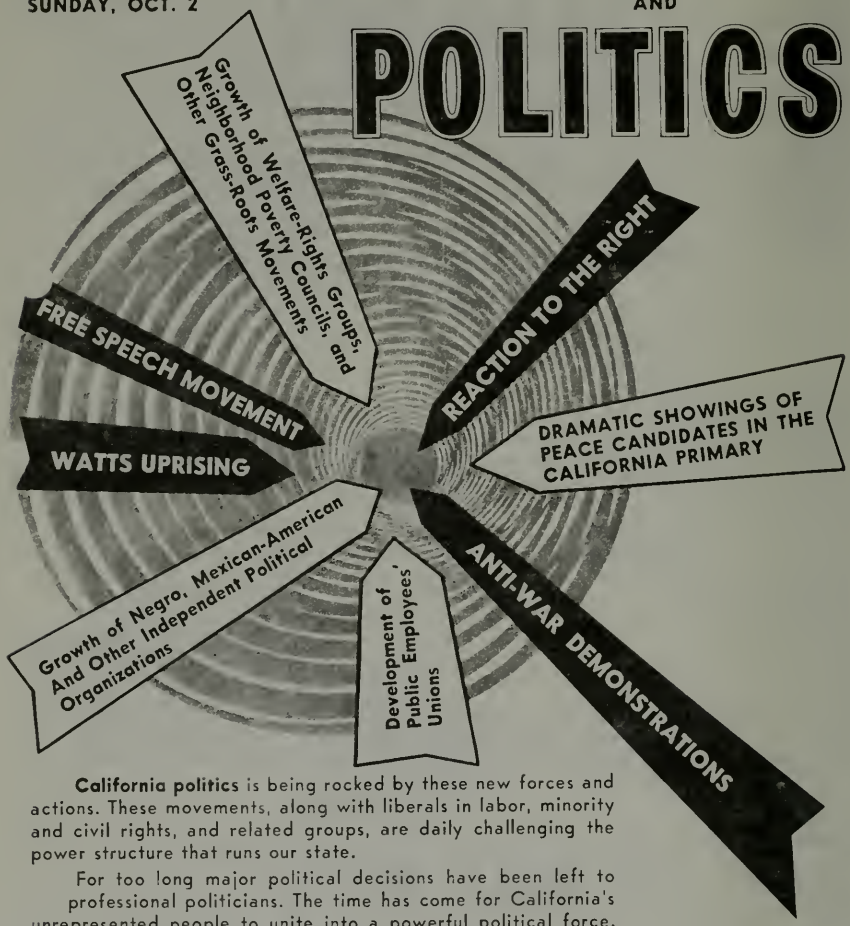
POWER

AND

POLITICS

To be held at
EAST LOS ANGELES COLLEGE
5357 E. Brooklyn Avenue

FRIDAY, SEPT. 30 (evening)
SATURDAY, OCT. 1
SUNDAY, OCT. 2



California politics is being rocked by these new forces and actions. These movements, along with liberals in labor, minority and civil rights, and related groups, are daily challenging the power structure that runs our state.

For too long major political decisions have been left to professional politicians. The time has come for California's unrepresented people to unite into a powerful political force. Let us, therefore, initiate political action which will bring about the changes that are so desperately needed in this state.

The Power and Politics Conference is open to EVERY INDIVIDUAL, EVERY POINT OF VIEW, EVERY GROUP, AND EVERY PROPOSAL FOR EFFECTIVE ACTION.

EXHIBIT III—Continued

AGENDA

September 30, Friday:

8:00 p.m.
East Los Angeles College Auditorium
Conference Keynoter: Julian Bond
Issues Keynoters:
Minority Rights—Dave Scott
Richard Calderon
Civil Liberties—Eason Monroe
Youth Rights—David Harris (Tentative)
Peace—Robert Scheer
Poverty—Opal Jones
Labor—Dolores Huerta (Tentative)
Political Satire: Watts Happening Group

October 1, Saturday:

9:00 a.m.
East Los Angeles College Auditorium
Plenary Session
Discussion Group Keynoter: Bert Corona

10:00 a.m.
Discussion Groups: political action, structure, unity.
(Discussion groups last until 2:00 p.m.)

(Registration closes)

2:00 p.m.
Issues Action Workshops
1. American Foreign Policy
2. Vietnam and domestic problems
3. Alternative solutions to the War
4. Black Power and Ghetto problems
5. Poverty Program: Friend or Foe?
6. Guaranteed income and welfare-right
7. Farm Labor and the Farm Workers' Strike.
8. New Politics Organizing in the district.
9. Housing: Is urban renewal an answer?
10. Labor and Unemployment
11. The Mexican-American: The Future of the Community

5:00 p.m.
Dinner
7:00 p.m. 11:00 p.m.
Plenary Session

October 2, Sunday:

8:00 a.m.
Caucuses of organizations

10:00 a.m.
Congressional district caucuses

11:30 a.m.
Lunch

12:00 noon
Final Plenary Session

3:00 p.m.
Conference closes

Box lunches will be available at cost Saturday and Sunday;

Registration closes 2 p.m. Saturday, October 1

EXHIBIT III—Continued

We Meet . . . *to explore ways and means of gaining political power so that we can deal effectively with the crucial issues confronting our state. Some of the questions which this conference will raise and, hopefully, answer are —*

WHAT BOLD, EFFECTIVE ACTION CAN WE TAKE, ON A STATEWIDE LEVEL, AGAINST THE WAR IN VIETNAM?
—How can we convince thousands more Californians to join us in action against the war?
—Can the peace movement work effectively with civil rights and other movements to stop the war? How?
—How can the anti-war forces in this state consolidate enough power to have an impact which will change policy?

HOW CAN MEXICAN-AMERICANS AND NEGROES GAIN GREATER POLITICAL POWER IN THIS STATE?
—How do we begin to implement effective solutions to the problems of the ghetto?
—How can we win significant minority representation at all levels of the political power structure?
—What does "Black Power" mean for California?
—Can Negroes and Mexican-Americans work together for mutual gains? On what issues? What will the role of the white liberal be in this struggle?

HOW CAN LIBERALS IN LABOR AND THE IN THE COMMUNITY AT LARGE WORK TOGETHER MORE EFFECTIVELY OR ECONOMIC JUSTICE?
—What can be done about escalating prices, taxes, rents and insurance rates?
—How can we work for full employment and/or a guaranteed annual income?
—How can the poor gain greater control of anti-poverty programs?

WHAT ACTIONS CAN WE TAKE TO PROTECT OUR RIGHT TO DISSENT WHILE ALSO EXPANDING OUR CIVIL LIBERTIES?
—How can we effectively combat right-wing influences?
—How can movements concerned with civil liberties relate to each other?

WHAT ARE OUR CHOICES IN THE NOVEMBER ELECTIONS?
—On which issues do we judge our support of candidates?
—Should we support Governor Brown? Is there an alternative?
—Should we concentrate on the State legislative and Congressional elections in November?

HOW CAN WE PREPARE FOR ELECTORAL ACTION IN 1967, 1968 AND BEYOND?
—Can we use existing political machinery for effective action on issues?
—What can we do to build and support grass-roots political organizations?
—How can we find and develop candidates who will truly represent us?

HOW CAN WE ORGANIZE EFFECTIVELY ON A STATEWIDE LEVEL?
—Can we coordinate existing statewide, local and "single issue" groups?
—Should we concentrate on strengthening existing groups?
—Should we attempt to build a new organization?
—How should we deal with the possibilities for third party olitics in this state?

The Statewide Conference on Power and Politics is initiated by Californians for Liberal Representation, an independent nonpartisan organization, in cooperation with individual sponsors. The CLR and the individual sponsors have not predetermined the conference results in any way and, of course, no organization is bound by the conference decisions.

EXHIBIT III—Continued

SPONSORS

Dr. Murray Abowitz
Ruth Abraham
John Adair
Bettina Aptheker
Pat Arnold
Marshall Axelrod
Prof. Gerald Berreman
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David Landy
Ben Leeds
John LeFlore

Jerry Lennon
Jim Lennon
George Leppert
Mark Lester
Cricket Levering
Marylouise Lovett
Victor Ludwig
Clifford E. McClain
James McClellan
Mary Mahon
Pierre Mandel
Rayner Mann
John V. Manning
Michael B. Marcus (Ph.D.)
Bertha Marshall
Ralph Merola
Richard Miller
Ernest Moore
Percy Moore
Mr. and Mrs. George H. Mount
Frank Munoz
Nancy Murphy
Linus Pauling
Paul Perlin
Paul Phillips
Anne H. Pollock
Raman Ponce
Mr. and Mrs. Wally Porter
Carol Powell
Mr. and Mrs. Concepcian Ramirez
Willie Raymond
Saul Reider
Mr. and Mrs. Tom Richards
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Edmond Rosen
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Don Rothenberg
Jerome N. Sampson
Irving Saraoff
C. Wade Savage
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Ralph Schlaming
Ira Schneck
Michael Schneider
Rev. Henry P. Schroerluke
David Scott, Sr.
Prof. John Searle
Mr. and Mrs. Nicholas Seidita
Jules Seitz
Julia Sherman
Laurence (Larry) Sherman
Gilbert L. (Bud) Simanson
Irving C. Smith
Eric Solamon
James Stanberry
E. R. Stephenson
Era T. Stinson
Dr. Fred Stripp
Peter A. Szego
Mrs. Carol Taube
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Raul Torres
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Elijah Turner
Mr. and Mrs. Kazuo Umemato
Del Varela
James Vann
Eleanor Wagner
Harley Waite
Henry Waxman
Maurice Weiner
Harvey Wheeler
Rev. Cecil Williams
Rev. W. Hazaiah Williams
William J. "Bill" Williams
Marshall Windmiller
Tom Winnett
Joe Wolf
Wilfred Ussery
Mr. and Mrs. Arthur Zahler
Dr. and Mrs. Isidore Ziferstein

(Partial list)

Statewide Conference Committee
722 S. Western Avenue
Los Angeles, California
(213) 385-8000

or

Statewide Conference Committee
55 Colton Street
San Francisco, Calif. 94103
(415) 861-1866

- ☐ I will attend the Statewide Conference on Power and Politics.
- ☐ I am enclosing my $1.00 fee for advance registration. (Registration fee may be paid at conference.)
- ☐ I am enclosing $_____ to help with the costs of the conference.
- ☐ I live in the Los Angeles area and will be able to provide free housing.

If coming from outside of the Los Angeles area:

- ☐ I prefer free housing at a private home.
- ☐ I prefer a moderately priced hotel room.
- ☐ I want to reserve low-cost transportation to the Conference.

Name (Please print) _____ Telephone _____

Street Address _____ City _____

EXHIBIT IV



PAUL MONTAUK for Mayor of Oakland

Paul Montauk, 44, an active socialist for 25 years, is presently employed as a teacher. He was a trade union organizer for the CIO, chairman of the Cannery Union strike committee in 1946, and a participant in the Oakland General Strike. He was a delegate to the Oakland Voters League from the Steel Workers Union in 1948, and has been a socialist candidate for Mayor of Oakland and for the City Council.

PETER CAMEJO for Mayor of Berkeley

Peter Camejo, 27, former National Secretary of the Young Socialist Alliance, is at present an organizer for the Socialist Workers Party. He was New England Organizer for the Fair Play for Cuba Committee, worker for Clifton DeBerry's socialist campaign for President in 1964, and is a leading opponent of the Vietnam war.

VOTE SOCIALIST

VOTE SOCIALIST

- Withdraw our troops from Vietnam now.
- Let the people decide on Vietnam. Organize a national referendum to decide whether the U.S. should get out of Vietnam.
- Support the right of GIs to discuss the war and say what they think about it.
- End capitalist conscription—no draftees to fight imperialist wars.
- Support the Negro people's fight for freedom, justice and equality—the fight for black power.
- Support labor's fight against inflation—for union escalator clauses to compensate for rises in the real cost of living.
- Repeal all witchhunt and anti-labor laws. No laws against the right to strike.
- Support the organization of trade unions at the University—the largest employer in Berkeley. No cops on campus. Universities should be run by faculty and students, not big business.
- Launch a crash program to build decent low-cost homes.
- Oppose war taxes. No taxes for incomes under $7,500.
- Encourage independent, anti-capitalist Negro and labor political action.
- Work for a democratic socialist America.

..... Clip and mail to .....
Socialist Campaign Committee
2003 Milvia, Berkeley

( ) Please send me more information
( ) I want to help in the election campaign
( ) Enclosed is $.....to help pay campaign expenses

Name.....Phone.....
Address.....

For literature on the colonial revolution, black power, and socialism, visit Pioneer Books, 2003 Milvia, Berkeley, 848-3992

Socialist Candidates



PAUL MONTAUK
for Mayor of Oakland

VOTE AGAINST the VIETNAM WAR

OCT 16 1967



PETER CAMEJO
for Mayor of Berkeley

ENDORSED BY

Socialist Workers Party

For Berkeley City Council



Jaimey Allen, Ove Aspoy, Brian Shannon

Jaimey Allen, 23, teaches music and is a member of the Young Socialist Alliance. She participated in the early freedom rides to South Carolina, was arrested at the Sheraton Palaca-Auto Row sit-ins, and was chairman of the S. F. Defendants Committee. She organized block clubs in Area 2, Filmore district, S. F. A founding member of the Berkeley VDC, she was a leading participant in the Womens March to Bring Our Men Home.

Ove Aspoy, 21, is a member of the Young Socialist Alliance. He works as a Laboratory Assistant and is a member of the Oil, Chemical and Atomic Workers Union. He studied at San Mateo Junior College and the University of California, and was a founding member of the Berkeley VDC.

Brian Shannon, 30, was campaign manager for candidates endorsed by the Socialist Workers Party in the 1963 Berkeley city elections, has worked as a machinist, and is presently employed at The Steppenwolf. He attended the University of California Law School, was arrested at the Sheraton Palace sit-in, and is Bay Area Secretary of the Alexander Defense Committee, for the defense of political prisoners in South Africa.

VOTE SOCIALIST

Hundreds of thousands of young American men have been sent to Vietnam and many more are slated to go. Thousands of GIs have died already and many more will die as Johnson keeps escalating the war. Prices are rising, and the war is being used as an excuse for government attack on the unions. New war taxes will soon be passed to make the poor pay for the war

Tens of thousands of Vietnamese men, women and children are being killed by U.S. bombs and burned alive by U.S. napalm.

The ordinary people of America have no stake in this war. The people of Vietnam do not support the U.S.-backed dictatorship in Saigon. They want the U.S. troops to go home, and more and more GIs and their families want the same thing.

This war is unjust and immoral. It is also illegal. The American people were never consulted. War was never declared. Should one man have the dictatorial right to plunge the country, and perhaps the whole world, into war? There should be a full discussion and referendum vote by the American people on the war.

The first ones whose opinion should be heard in such a democratic discussion are the GIs who are fighting and dying in that war. Support the democratic right of the soldiers to express their views without fear or reprisal. And let every GI vote. If a man can be drafted at 18, he's old enough to vote at 18.

This war is not being waged to preserve freedom. It is being fought to protect the profits of giant banks and corporations. People all over the world, including the people of Vietnam, are trying to end the capitalist system that brings them only misery and exploitation. Washington is waging hot and cold war against them to save the world for capitalism.

This war nust be ended now! Bring our men home from Vietnam!

* * *

Here in the USA, capitalism means exploitation for all workers, and poverty for millions. Black people and other minorities are forced to live in ghettos. The capitalists, who profit from Jim Crow, pump poisonous racism into every vein of our society.

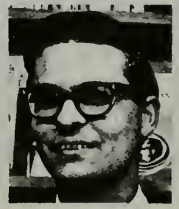
That's why candidates endorsed by the Socialist Workers Party support the movement for black power. Black power means effective political power for black people to strike off the chains that bind them. It is a movement that every fair-minded American should support.

* * *

All working people—white and black—need to develop their own political power. Both the Democratic and Republican parties are controlled by big businessmen and are committed to the preservation of the capitalist system. Neither party will take any stand that runs counter to the interests of the capitalists who profit from war and racism.

These parties must be fought and exposed. The SWP favors black independent political action against the two capitalist parties. It also favors general working class independent political action and the formation of a labor party. The candidates endorsed by the Socialist Workers offer a meaningful independent alternative to the war, racism and anti-unionism of the Republicans and Democrats.

FOR BERKELEY BOARD OF EDUCATION



Ernest Erlbeck, 27, socialist candidate for the Berkeley School Board, has been active in the struggle for civil rights and to end the Vietnam war, and is manager of Pioneer Books.

(Distributed by Campus YSA)

EXHIBIT V

"We have evidence of deliberate and systematic destruction of schools, hospitals, and civilian life, from U.S. bombing of North Vietnam."
-J.B. Neilands

Hear

Report from North Vietnam

U.C. Prof. **JB Neilands**

CNP candidate for Berkeley City Council; just back from North Vietnam, where he spoke to Ho Chi Minh and downed American pilots.

BERKELEY LITTLE THEATER
FRI MAR 31 50¢ 8:00PM

MARSHALL WINDMILLER

vote:

AVAKIAN	City Council	X
DELLUMS	City Council	X
HARAWITZ	City Council	X
NEILANDS	City Council	X
KALDENBACH	Auditor	X
WILLIAMS	School Board	X

CNP

EXHIBIT VI

How Do You Answer a "Red Smear?"

It's pretty hard to catch up with the man with the smear brush, particularly when he has the front page of the Berkeley Gazette, the only local daily newspaper, at his disposal, for a whole week.

It is of course clear to those who have learned for themselves about the CNP, that it is an organization of thousands of Berkeley residents deeply concerned about the war in Vietnam and the continued crisis of poverty and racism in our communities. It has further been adequately demonstrated in articles in the National Observer, the New Republic and the New York Times that the overwhelming majority of activists in the Scheer for Congress campaign and the CNP which grew out of it, do not belong to any political party and are in fact frequently skeptical of ideological dogma of any kind. But the very purpose of a smear is to blot out the individual faces in an organization and to force them all into the category of "the enemy."

The CNP is an association of individuals, each free to work out his own political philosophy. But we are agreed on the necessity to combat the hysterical anti-communism which has gripped this society since the days of McCarthy. The daily smear attacks in the Berkeley Gazette represent a degeneracy of the local political climate into McCarthyism and the CNP is determined to oppose this trend rather than submit to it. We have no right to insist that the voter share our position on the issues, but we do have a right to expect that they will give all candidates a fair hearing and vote on the issues, not in response to innuendo and smear.

VOTE APRIL 4th

CNP

Community for New Politics

Formerly **SCHEER for CONGRESS**

EXHIBIT VI—Continued

CNP PROGRAM

The Community for New Politics has formulated an exciting and serious program on the critical issues facing Berkeley. As City Councilmen, CNP candidates will act to:

Oppose the Vietnam War.

Move toward purchase of P. G. & E., which for a dozen California cities has provided lower rates and/or taxes and additional money for community development.

Preserve the Bay for recreational use--not for commercial exploitation.

Force BART to live up to its promises to hire local unemployed and provide job-training.

Eliminate discrimination in housing, in City employment and in all City contracts.

Involve people throughout the community in all levels of planning.

Initiate City competition in the real estate and construction markets through expansion of the Public Works Department to provide greater public profit, integrated jobs and integrated housing at varied price levels scattered throughout the city.

Develop the BART air rights and "corridor" for the public benefit: child care and community centers, parks and public profit enterprises such as rental housing; establish and enforce aesthetic and architectural standards for development.

Eliminate City Loyalty Oath; fight state loyalty oaths.

Promote collective bargaining rights for all city employees; pass an anti-scab ordinance.

Work to end the hostility between the University-South Campus community and the rest of the City.

Defend students and faculty at the University: quality education, no budget cuts, no tuition, political freedom, student-faculty participation in University government, no legislative investigation, collective bargaining rights for employees.

EXHIBIT VI—Continued

THE COUNCIL'S PRO-WAR RESOLUTION

RESOLUTION NO. 40,935- N.S.

EXPRESSING SUPPORT AND DEVOTION TO THE MEMBERS OF THE ARMED FORCES OF THIS COUNTRY FIGHTING IN VIETNAM.

BE IT RESOLVED by the Council of the City of Berkeley as follows:

WHEREAS , young men of the City of Berkeley, California, are engaged in mortal combat in Viet Nam in support of the Foreign Policy commitments of this Nation; and

WHEREAS, groups and individuals in our society have, by demonstrations and otherwise, sought, and are seeking, to undermine this policy; and

WHEREAS, these actions have been given publicity in the press, on radio and television, that many people, including those of hostile nations, have been led to believe that a substantial number of our people are not willing to support our commitments or uphold our national honor; and

NOW, THEREFORE, Be it resolved that this Council hereby extends to the members of the armed forces, its fullest support and warmest devotion to them as they perform their hard duty, thus assuring them that the spirit of patriotism is not dead in this country and that they are neither forgotten nor unappreciated by us.

FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States, to the United States Senators from this State and to Congressmen from this district for their information and edification and to the several communications media for widespread dissemination to the public at large.

Dated: November 9, 1965
Reaffirmed Febuary 7, 1967

Adopted by the Council of the City of Berkeley by the following vote:

Ayes: Councilmen Bort, Brown, DeBonis, Dewey, Gordon, May Sweeney and President Johnson.

Noes: None

Absent: Councilman Harris

WALLACE J.S. JOHNSON
Mayor and President of the Council

ATTEST: EDYTHE CAMPBELL
City Clerk and Clerk of the Council

EXHIBIT VI—Continued

VOTE CNP APRIL 4th

AUDITOR

ROBERT KALDENBACH X

SCHOOL BOARD

HAZAIAH WILLIAMS X

CITY COUNCIL

ROBERT AVAKIAN	X
RON DELLUMS	X
HOWARD HARAWITZ	X
J. B. NEILANDS	X

The following is a partial list of the endorsers of Avakian, Harawitz, Neilands and Kaldenbach.

American Federation of Teachers, Local 1570
Californians for Liberal Representation
East Bay Interdenominational Ministerial Alliance*
Women for Peace
Eric Anderson - President, Berk. Fed. of Teachers**
Helen Appleford
Bob Arnold - Member, Co-op Board of Directors
Matthew A. Baggett, Jr.
Professor Al Bendich
Malcolm Burnstein - Attorney
Miriam Connolly - Businesswoman
Reverand J. Raymond Cope
Frank Daar - President, Berk. Young Democrats
William Dane - Teacher
Dr. Fred Epstein
Bill Finn - IRA
John Fitzgibbon - Teacher
Mike Haley - Pres., Freedom Democratic Club
Elly Harawitz - Welfare Rights Organization
Judith Hartman - Teacher
Doug Hill - Attorney
Professor Mo Hirsch
Howard Jeter
Evelyn Johnson
Michael Jones
Dr. Ephraim Kahn
Fredricka Kushner
Fred Lisker
George Lydon - Attorney, B.B.C.
Professor Masao Miyoshi
Roy Nakadegawa
Brian O'Brian
Malvina Reynolds
Don Rothenberg
Professor Harry Rubin
Robert Scheer - Editor, Ramparts Magazine
Brownlee Shirek
Professor Stephen Smale
Ralph Stone
Dr. Fred Stripp
Professor Richard Strohman
Allan Temko
Robert Treuhaft - Attorney
Ysidro Urena
Toni Vincent
Dr. & Mrs. Michael Wales
Jack Weinberg
Thomas Winnett - Businessman
Professor Leon Wofsy

*Professor Neilands was in Vietnam when the Ministerial Alliance met and was not able to receive their endorsement.

**Organizations are listed for identification only.

Community for New Politics *2214 Grove St., 549-0690*

Formerly **SCHEER for CONGRESS**

EXHIBIT VII

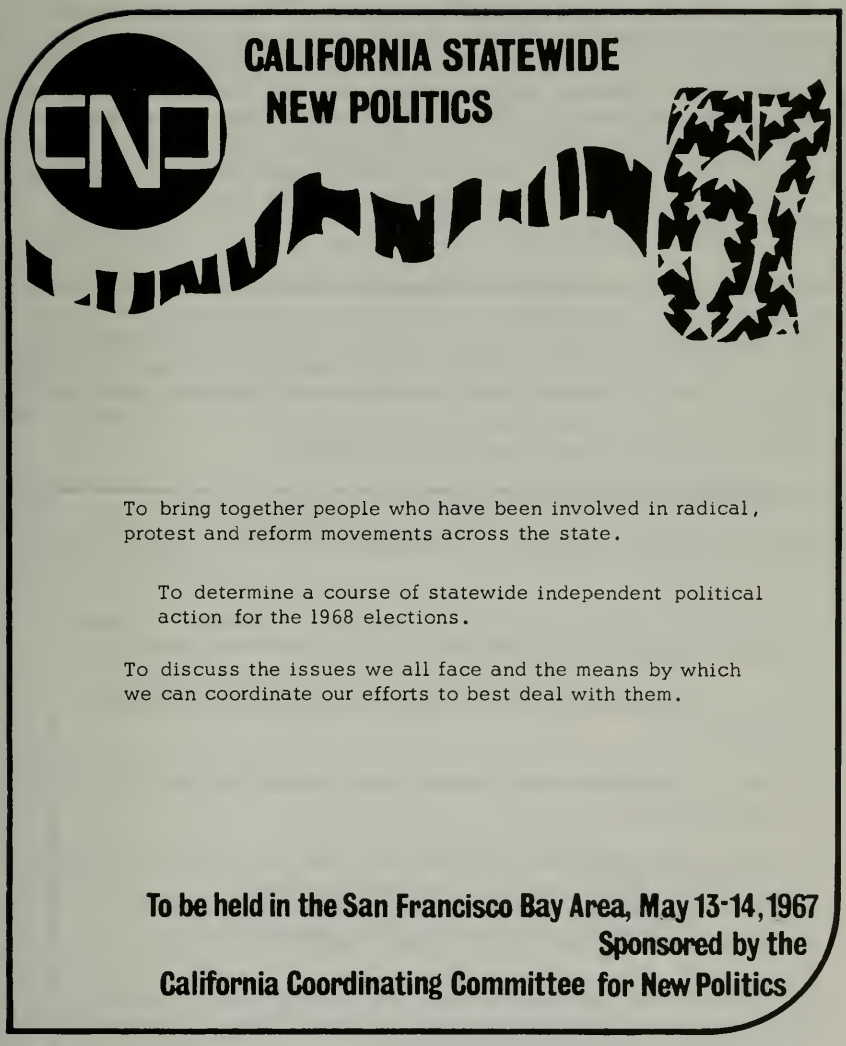

CALIFORNIA STATEWIDE
NEW POLITICS
To bring together people who have been involved in radical, protest and reform movements across the state.
To determine a course of statewide independent political action for the 1968 elections.
To discuss the issues we all face and the means by which we can coordinate our efforts to best deal with them.
To be held in the San Francisco Bay Area, May 13-14, 1967
Sponsored by the
California Coordinating Committee for New Politics

EXHIBIT VII—Continued

Our society is plagued with war, poverty, racism, and rigid bureaucratic systems of social and political control. Those who govern us ignore the real needs of people and instead serve the demands of rich and powerful interests. Opportunism is the mark of today's establishment politicians, reinforcing the exploitation and alienation which so characterize our society. A large and growing number of Californians are rebelling against these evils. In their own communities, and in their own and varied ways, these Californians are striving to humanize our society and to establish true democracy as the only legitimate creator of authority.

The California Coordinating Committee for New Politics, established last September in Los Angeles, at an open convention of several thousand delegates, is sponsoring a convention in the San Francisco Bay Area, May 13-14. All Californians who are engaged in trying to achieve social and political change, who believe that the existing political structures are totally inadequate, who want to build a new politics, are urged to attend and participate in the convention.

THESE AND OTHER ISSUES WILL BE DISCUSSED AND DEBATED AT THE CONVENTION:

1. In what way can we act as a significant, independent, radical force in the 1968 presidential elections?

2. What should we do in the coming state and congressional elections?

3. How can we effectively oppose right wing forces and right wing programs?

4. What are appropriate statewide activities in response to attacks on our University and social welfare programs?

5. What should or can be done about lowering the voting age to 18 ?

6. How can we better coordinate activities occuring on different issues and in different parts of the state? How can we build an effective statewide organization?

EXHIBIT VII—Continued

THE 1968 PRESIDENTIAL ELECTION - TWO PROPOSALS

1 We should run a slate of delegates in the democratic primary who would be pledged to oppose Johnson at the Democratic National Convention. The effect of this slate would be similiar to that of the peace candidates' campaigns in 1966 in defining and strengthening the NEW POLITICS movement. The running of this slate would create a structure parallel to and inter-dependent with the Democratic Party - a necessary step in an attempt to gain political power.

Since many people are ready to vote against Johnson, a NEW POLITICS slate, if pledged against Johnson before the "liberals" were fully organized, would have a chance of winning.

2 We should invite Americans across the country to join us in launching an independent campaign for the '68 presidential elections. We must oppose all candidates who support the war, when it really counts - November '68.

The purpose is to use the campaign as a vehicle to attempt to integrate in terms of program and demands the many now isolated local movements. We will educate and organize around the war and around a specific political program to be adopted. We will make a critique of existing American institutions, and will take the first step toward building a national independent radical movement.

Mail to:
California Coordinating Committee For New Politics
P.O. Box 809, Venice, California 90291 Phone (213) 396-5916

☐ I would like more information.

☐ I would like to help plan and organize the convention.

☐ I would like information on how to start a CNP group in my area.

☐ Enclosed is my advance registration for the convention.

(check one) ☐ $1.00 ☐ $2.00 ☐ $_____
Registration according to ability to pay is appreciated. Contribution in addition to registration fee is requested to help pay the cost of the conference.

Advance registrants will receive position papers prior to the convention.

NAME_____ PHONE_____
STREET ADDRESS_____ CITY_____

EXHIBIT VII—Continued

ONE WEEK-END IS NOT ENOUGH. Major policy decisions about the form our political activity will take must be based on advance discussion and thoughtful consideration.

In order to create such discussion, submit discussion drafts and position papers to: CCCNP, P.O. Box 809, Venice, California 90291. All contributions must be typed on 'A.B. Dick' (4-hole) mimeo stencils. All such material received will be printed without alteration. Position papers will be sent out to the following points around the state to be distributed and discussed. Your ideas and plans are wanted and will be publicized.

Berkeley
C.N.P.
2214 Grove St.
Berkeley

Humboldt County
Mike Jayne
1348 Beverly Dr.
Arcata

Long Beach
Peace Center
2626 Anaheim St.
Long Beach

Marin County
Marie Ingerman
22 Harbor Dr.
Corte Madera

Orange County
Judith Slattery
#33, 2500 Salta
Santa Ana

Richmond
James E. Vann
5429 Sutter Ave.
Richmond

Riverside
Lauren Miller
2005 Linden
Riverside

Sacramento
Marilyn Noble
1118 25th St.
Sacramento

Los Angeles
S.C.N.P. Election
Headquarters
4319 Melrose Ave.
Los Angeles

Clay Carson
P.O. Box 122
308 Westwood Plaza
U.C.L.A.

Students for New Politics
5151 State College Rd.
Cal-State, L.A.

San Diego
Sandra Baltimore
9527 La Jolla Shores Dr.
La Jolla

Mendocino County
Byron Randall
P.O. Box 37
Mendocino

Monterey County
Dick Miller
509 Grand
Pacific Grove

Napa County
Greta & Charles
Slater
1411 Polk St.
Napa

Oakland
Joe Feit
4019 Brookdale Ave.
Oakland

San Fernando Valley
Dialogue Bookstore
5552 Fulton St.
Van Nuys

Santa Barbara
CNP Coffeehouse
422 Milpus St.
Santa Barbara

San Jose
Kaleidscope Books
247 So. 1st Street
San Jose

More distribution points are needed. If you are interested in setting one up, please contact CCCNP or the local group nearest you.

California Coordinating Committee
For New Politics
P.O. Box 809
Venice, California 90291

DELANO

APPENDIX A

Statement of Jack Pandol

Pandol, a local grower, was interviewed in his office at Route 2, Box 388, Delano, California, on February 26, 1966, and March 5, 1966. He is one of three brothers who own and operate a 2,000-acre ranch in the area. He employs as high as 200 men during the peak of the season and has lived in Delano for most of his adult life. Pandol, who is a member of the Council of California Growers, the California Grape and Tree Fruit League, the Western Growers Association and the Farm Bureau Federation, stated substantially as follows:

The National Farm Workers Association (NFWA) and the Agricultural Workers Organizing Committee (AWOC) both claim that the worker is underpaid. They have talked about $1.20 and $1.30 an hour but fail to mention that with piecework rates any average picker can earn at least another 60 cents an hour. The average wage paid pickers during the 1965 harvest was more than $1.80 an hour; Pandol himself paid an average of $1.83 per hour. Some growers, like Schenley Industries paid as high as $2.42 an hour. In addition, there are numerous fringe benefits such as housing facilities, camp cooks, transportation, etc., that are provided by the growers. In short, it is not the wage rate *per se* that is at a minimum but rather the number of days a year that a grower needs a full crew. The latter has to do with the character of the business and with "mother nature" and nothing to do with the growers. They talk wage rates because that sounds good but what they really have in mind is some kind of guaranteed annual income, whether they work or not. Maybe society should provide this, but not a businessman who must compete with other businessmen in order to market his product.

A contract would tie the hands of the growers who, although they produce 90 percent of the world's grapes, must also compete with other luxury fruit products. The

issue is not grapes versus grapes (in other areas) but grapes versus other luxury fruit products. If the Delano growers get tied up with a contract they will be at an unfair disadvantage and unable to compete on a competitive market. In addition, a union contract would place the growers at the mercy of the unions since the latter would hold all the cards. Grapes are a highly perishable commodity—unlike steel, automobiles or coal—and will spoil if not processed on time. Being forced to submit to arbitration under the terms of the contract or the NLRA (should present legislation be changed to cover the farm laborer) could prove ruinous within a matter of a few days were a strike called and the growers restricted by law from hiring other workers.

Another matter, quite apart from the preceding economic arguments, has to do with the rights of the workers themselves. There is reason to believe that these groups, the NFWA and AWOC, simply do not represent the workers. Both groups claim to have memberships in the thousands but rally a few hundred or less when something important is at stake.

Pandol emphasized that none of his workers have gone out on strike and that there is a serious question in his own mind as to just why they would want to. He maintains that he and his fellow growers are paying good wages—despite what the strike organizations say—and that if the workers should join a union they will have to pay mandatory dues (to be deducted from their pay) or not be able to work. Even worse, should the "closed-shop" provisions of the contract be held legal, he would have no choice at all and be forced to join the union. Why force upon them something they don't want; why force them to join and pay dues to a "union" they don't support? The pickers and pruners who have left the fields and signed those "union authorization slips" have done so because they were threatened, harassed and lied to. Even the prostriker book *Huelga,* written by Eugene Nelson, describes how pickers were told ". . . if you sign these [meaning the authorization slips] then the Department of Employment can't send more workers to take your place." [1] This is a misrepresentation. They also followed people home [2] and,

[1] *Huelga,* p. 7.
[2] *Ibid.,* p 111.

as Nelson describes in great detail, they picketed the homes of anyone who refused to go along with them.[3] It seems only reasonable that those "thousands" of so-called authorization slips they have are at least suspect. If the union organizations do not represent the majority of the workers, how can they say they are concerned with the people? In a democracy, the people means the majority, any high school student can tell you that. Do Chavez and his followers think they know what's best for the majority and therefore feel justified in changing them, whether they want to be changed or not?

Another thing that a lot of people refuse to consider is that the farmer is not getting rich off what the land produces. He himself figures the net return on his investment to be about 2 percent *per annum*. You can get twice that in any bank. If farmers have made money in the Delano area it is because they risk their capital—and many started with very little—in a tenuous enterprise. The value of the land doubled and tripled and many have become wealthy, but it came from the purchase and sale of land, not from growing grapes. The point is that if they (the farmers) are pushed any closer to the margin, they simply won't be able to continue. Many will sell out and those who buy and the ones who remain will be forced to switch production to crops that require less labor. If this will help the condition of the farmworker then someone had better point it out. Like it or not, agriculture is not like industry; likening it to industry won't change its nature or its problems; nor will it insure its survival simply because someone claims there to be an analogy between it and the supposed compatibility of the United Auto Workers (UAW) and General Motors.

The major points articulated by Pandol during the interview, as well as on subsequent occasions, may be summarized as follows:

1. The wages paid workers are substantially higher than the AWOC and NFWA people have maintained.
2. The real problem involves an absence of year-round employment. It is not the grower's responsibility to "make work" or to become a private welfare agency.

[3] *Ibid.*, pp 43, 53–58.

3. A union contract would make Delano grapes too expensive and would price them out of the luxury fruit market.
4. A contract and NLRA coverage would stack everything in the union's favor. The growers have a perishable commodity that cannot stand around while the negotiators decide what to do.
5. The strikers are not the workers. Those who want the strike are outsiders who see themselves as noble crusaders against social injustice. They seek instant justice and instant equality without regard for the rights of the majority or the minority. They have defined their own "moral crisis" and are out to save people from themselves.
6. If the farmer goes broke or switches land use to crops that require fewer workers, the farmworker will be worse rather than better off.
7. Agriculture is unique—the success of industrial unionism within the overall economy is a nice pat example but does not necessarily carry over.

DELANO

APPENDIX B

Statement of Dolores C. Huerta

Huerta, who was interviewed in her office in the National Farm Workers Association (NFWA) headquarters, 102 Albany Street, Delano, California, on March 7, 1966, identified herself as a vice president and an official spokesman for NFWA. Huerta, who has been closely associated with Cesar Chavez, the NFWA and the problems of the farm laborer for many years stated substantially as follows:

NFWA was founded in Delano in September 1962 [4] by Cesar Chavez after he resigned his position with the Community Service Organization (CSO). He chose to live in Delano because his family lived there and because it had been his home for several years. The predominantly Spanish-speaking farmworkers' association which he founded is organized around the conviction that ". . . economic progress must be accompanied by a corresponding social progress"; in other words, the recognition that workers "must be paid a wage which allows them to live a truly human life and fulfill their family obligations in a worthy manner." [5]

Although wages and working conditions are of primary importance, the association also offers the services of a credit union and insurance plan and a small consumer co-op. All of this she notes is contained in the NFWA "Statement of Purpose," as well as the "Rules for New Members." The credit union, insurance plan and co-op services, as well as assistance to members when they have not been paid their wages, suffered accidents, etc., is available at a cost of only $3.50 per month. Members also receive a free copy of *El Malcriado* twice a month.

The most important tool available to the worker is his right to strike. The NFWA feels moreover that it can be an effective tool without the use of any violence. The hand-

[4] NFWA Constitution and Bylaws were received by the State Division of Corporations on November 3, 1963.

[5] NFWA "Statement of Purpose."

out, "Rules for Pickets," is provided every striker and volunteer. Item 1 reads:

> "This is a totally nonviolent strike. If you feel that at any time you cannot remain nonviolent, tell the picket captain and leave."

According to the NFWA Constitution and Bylaws, before a strike may be called the local chapter shall "call a meeting for all members" to decide the question. If a majority decide to strike, then the executive board must notify *all* members. It then requires a two-thirds vote cast in a secret ballot before a strike is called. Even then, the national executive board must be notified and provide its official sanction before a strike can be called.[6] In other words, the right to strike is not taken lightly and a decision to do so evolves out of a participatory, democratic process. The same is true for the selection of leaders; i.e., they are elected by a majority vote of the members and serve for specified terms of office. Thus, it is fallacious to attempt to separate the workers from the organizers and vice versa. They are one in the same since the leaders are only representatives elected by the workers.[7]

What is happening in Delano is not a conspiracy or "power grab" on the part of the strike organizations, as the growers would have the public believe, but a democratic response of the workers to the substandard living and working conditions that prevail in agriculture. Wages have been artificially depressed by the farmer for years. It was not until the repeal of Public Law No. 78 (the Mexican bracero program) effective December 31, 1964, that a really successful strike became possible.

The average worker has been receiving $1.20 per hour or less, plus something like 10 cents a box. Even if he picked an average of four boxes an hour, that still gives him a gross hourly wage of around $1.80 per hour. Figured on the basis of a five-day week, that comes to $72 per week. That may be all right if it were a supplemental income, but it isn't. It's all many of these people have and on today's market, you can't live decently or raise a family on it. Besides, the money comes in for maybe four or five months of the year. After that, noth-

[6] *Constitution of the NFWA*, Article 21, Sections 1–2.
[7] *Ibid.*, Articles 8 and 12.

ing! In the end it means that a man can earn little more than $2,000 a year in farm labor. No other occupation pays so little.

No one's asking for the moon or for year-round employment when the jobs aren't there. All the farmworkers want is a little more than what they're getting. They are asking for $1.40 per hour and 25 cents a box. Using the same base, this would come to $2.40 an hour; or $96 a week. Is that so much?

Sam Lipoma [8] was quoted in The Delano *Record* of November 30, 1965, as saying: ". . . these people are not getting enough money." [9] This is significant since it comes as an admission from one of the largest private operations in the strike zone; however, what he went on to say—as Huerta pointed out—is perhaps even more significant. Lipoma is further quoted as saying:

> "I think we have to uplift the whole industry so we can afford to pay more wages. Right now we can't. And in this transition, some people are going to be hurt . . . but we do not have to break strikes. Let's negotiate. Let's find out what we can do to work with these people so that we don't have outsiders in here . . . [otherwise] . . . we're predicating a big industry's very existence on the fact that we have to pay low wages."[10]

To put it most simply, at least a few of the growers recognize there to be a problem and understand that it is senseless, if not immoral, to build a business upon the low wages you pay your employees. This lesson was supposed to have been learned when the industry realized that better wages means more purchasing power and more purchasing power means more business.

Finally, if there are outsiders in the Delano area they are outsiders only in the sense that they don't make their homes in Delano itself. Many of these people come from nearby towns such as Earlimart, Richgrove or Mc-

[8] A local grower. He owns and operates the S. P. Lipoma Company, located at First and Glenwood, Delano.

[9] The *Delano Record*, November 30, 1965, p. 1. This statement has been used as one of the NFWA handouts, it was provided by Mrs. Huerta.

[10] *Ibid.*, p. 1.

Farland or other valley towns up and down Highway 99. Just because this is not Delano proper does not mean they come from Mars. Besides, even if there are people involved who are not immediately associated with life in Delano—whether they come from nearby McFarland or from as far away as Boston—should only convince the growers of how provincial they are. This is not bad in and of itself, but if it keeps them from seeing how out of pace they are with the rest of the country—and the economy, then someone has to come in and convince them otherwise. As Sam Lipoma suggests in the news article quoted, perhaps there would be no need for outsiders if the growers would face the facts and sit down and negotiate.

If the growers continue to avoid the issue by engaging in such fantasies as their claim that there is no strike, or that NFWA or AWOC don't represent the people, then one or both of two things should be done:

1. Governor Brown should intervene and ask for negotiations.
2. The California Legislature should seriously consider establishing collective bargaining legislation at the state level. Something like a "little Wagner Act," for instance, that would apply specifically to farmworkers.

What is taking place in Delano is going to be solved . . . it is only a matter of time. The right of a farmworker to earn a living wage is a basic right that no local group of farmers will be able to suppress forever. As Eugene Nelson points out in *Huelga:*

> "There are growers who want to negotiate, who have wanted to negotiate from the beginning of the strike! But once again, they are browbeaten into submission by the feudalistic mentality of richer men who would rather see their fellow growers ruined than recognize the inevitability of progress."

EXHIBIT A

Farm Workers Association

Statement of Purpose

I.

As Christians and workers we wish to realize the ideals of the Church in our lives and in the world in which we live. We see in the 20th century a sincere and agonizing attempt on the part of the Church to apply ancient truths and teachings to new and terrible problems, and we are hopeful that her efforts will contribute to a truly human community where each man works for the common good, where each enjoys abundant fruit from his labor, and each has the opportunity to develop to the fullest his human potentialities.

In the teachings of the Popes, and especially in the encyclicals of the late Pope John XXIII, we find expressed the sentiments and convictions which we share: the "overwhelming sadness" at "the sorry spectacle of millions of workers in many lands and entire continents condemned through the inadequacy of their wages to live with their families in utterly subhuman conditions; "...the conviction that economic progress must be accompanied by a corresponding social progress"; the recognition that workers "must be paid a wage which allows them to live a truly human life and to fulfill their family obligations in a worthy manner."

As agricultural laborers we are pleased with the late Pope's praise of farm work, an endeavor "which carries with it a dignity all its own." But we are especially pleased with his expression of "Our satisfaction with those sons of Ours the world over who are actively engaged in co-operatives, in professional groups, and in worker movements intent on raising the economic and social standards of the agricultural community." For we have dedicated ourselves to improving the working and living conditions of farm laborers, and we seek to achieve our ends through co-operative effort.

The late Pope expressed explicitly His approval of labor unions. By the natural laws a man has the right, he wrote, not only to work, but "the right to demand working conditions in which physical health is not endangered, morals are safeguarded and young people's normal development is not impaired." In addition, "the remuneration of work is not something that can be left to the marketplace; nor should it be a decision left to the will of the more powerful. It must be determined in accordance with justice and equity."

Pope John reserved a special place in His thoughts, he wrote, for Christian associations of workers who endure great difficulties in their endeavor to promote the material and moral interests of the working people. As members of the Farm Workers Association, we draw strength

EXHIBIT A—Continued

from His blessing. We recall the long decades of strife and animosity between capital and labor, especially bitter in California, and the insuperable difficulties farm workers have experienced in attempting to act cooperatively. We feel that the Church should strive to effect that balance of economic and social progress of which the Pope speaks, and to put into practice the principles of Christian social teaching.

II.

The Farm Workers Association has had experience in developing cooperative efforts among farm workers. It operates a credit union, an insurance plan, and small consumer co-op for its members. In addition, the officers and staff have been authorized by the members to act as their representatives in negotiations with employers, although, unfortunately, employers have not responded to requests to negotiate.

We believe that all Christians have a deep and living concern for social justice. We believe that all Christians wish to work for the establishment of just conditions of labor, insofar as it is within their power and proper province. Our desire is to work together with all Christians, under the guidance of conscience and right reason, to create a high degree that just economic order which we believe that all Christians desire. The Farm Workers Association believes that the experience of its members and staff can contribute to that high end.

Farm Workers Association

P. O. Box 894

Delano, California

APPENDIX C

THE PLAN OF DELANO

Farmworker's Manifesto

We, the undersigned, gathered in Pilgrimage to the capital of the State in Sacramento in penance for all the failings of Farm Workers as free and sovereign men, do solemnly declare before the civilized world which judges our actions, and before the nation to which we belong, the propositions we have formulated to end the injustice that oppresses us.

We are conscious of the historical significance of our Pilgrimage. It is clearly evident that our path travels through a valley well known to all Mexican farm workers. We know all of these towns of Delano, Madera, Fresno, Modesto, Stockton and Sacramento, because along this very same road, in this very same valley, the Mexican race has sacrificed itself for the last hundred years. Our sweat and our blood have fallen on this land to make other men rich. This Pilgrimage is a witness to the suffering we have seen for generations.

The Penance we accept symbolizes the suffering we shall have in order to bring justice to these same towns, to this same valley. The Pilgrimage we make symbolizes the long historical road we have travelled in this valley alone, and the long road we have yet to travel, with much penance, in order to bring about the Revolution we need, and for which we present the propositions in the following PLAN:

1. This is the beginning of a social movement in fact and not in pronouncements. We seek our basic, God-given rights as human beings. Because we have suffered—and are not afraid to suffer—in order to survive, we are ready to give up everything, even our lives, in our fight for social justice. We shall do it without violence because that is our destiny. To the ranchers, and to all those who oppose us, we say, in the words of Benito Juarez, "EL RESPETO AL DERECHO AJENO ES LA PAZ."

2. We seek the support of all political groups and protection of the government, which is also our government, in our struggle. For too many years we have been treated like the lowest of the low. Our wages and working conditions have been determined from above, because irresponsible legislators who could have helped us, have supported the rancher's argument that the plight of the Farm Worker was a "special case." They saw the obvious effects of an unjust system, starvation wages, contractors day hauls, forced migration, sickness, illiteracy, camps and subhuman living conditions, and acted as if they were irremediable causes. The farm worker has been abandoned to his own fate—without representation, without power—subject to mercy and caprice of the rancher. We are tired of words, of betrayals, of indifference. To the politicians we say that the years are gone when the farm worker said nothing and did nothing to help himself. From this movement shall spring leaders who shall understand us, lead us, be faithful to us, and we shall elect them to represent us. WE SHALL BE HEARD.

3. We seek, and have, the support of the Church in what we do. At the head of the Pilgrimage we carry LA VIRGEN DE LA GUADALUPE because she is ours, all ours, Patroness of the Mexican people. We also carry the Sacred cross and the Star of David because we are not sectarians, and because we ask the help and prayers of all religions. All men are brothers, sons of the same God; that is why we say to all men of good will, in the words of Pope Leo XIII, "Everyone's first duty is to protect the workers from the greed of speculators who use human beings as instruments to provide themselves with money. It is neither just nor human to oppress men with excessive work to the point where their minds become enfeebled and their bodies worn out." GOD SHALL NOT ABANDON US.

4. We are suffering. We have suffered, and we are not afraid to suffer in order to win our cause. We have suffered unnumbered ills and crimes in the name of the Law of the Land. Our men, women, and children have suffered not only the basic brutality of stoop labor, and the most obvious injustices of the system; they have also suffered

the desperation of knowing that that system caters to the greed of callous men and not to our needs. Now we will suffer for the purpose of ending the poverty, the misery, and the injustice, with the hope that our children will not be exploited as we have been.

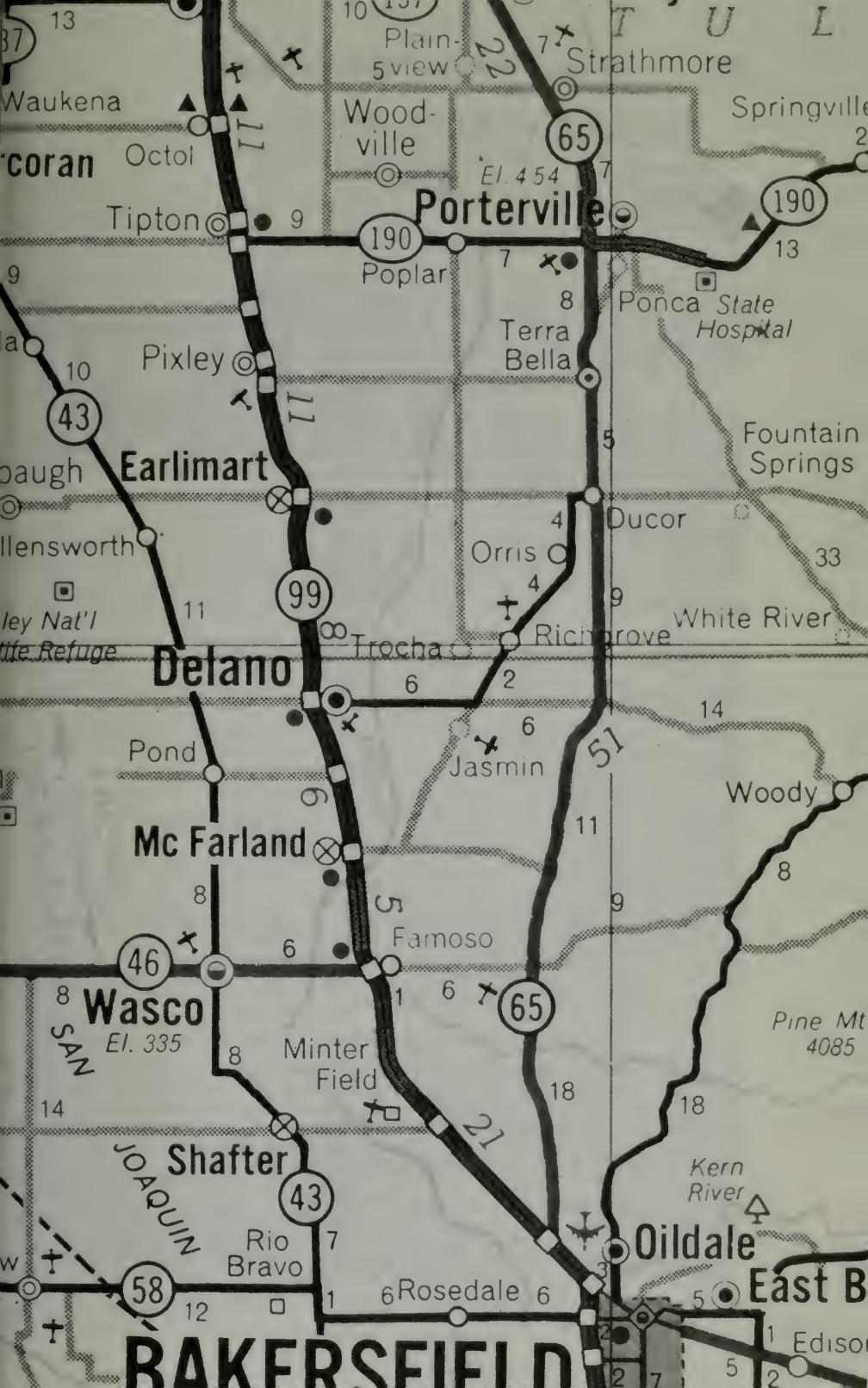
5. We shall unite. We have learned the meaning of UNITY. We know why these United States are just that—united. The strength of the poor is also in union. We know that the poverty of the Mexican or Filipino worker in California is the same as that of all farm workers across the country, the Negros and poor whites, the Puerto Ricans, Japanese, and Arabians; in short, all of the races that comprise the oppressed minorities of the United States. The majority of the people on our Pilgrimage are of Mexican descent, but the triumph of our race depends on a national association of all farm workers. The ranchers want to keep us divided in order to keep us weak. Many of us have signed individual "work contracts" with the ranchers or contractors, contracts in which they had all the power. These contracts were farces, one more cynical joke at our impotence. That is why we must get together and bargain collectively. We must use the only strength that we have, the force of our numbers. The ranchers are few; we are many. UNITED WE SHALL STAND.

6. We shall Strike. We shall pursue the REVOLUTION we have proposed. We are sons of the Mexican Revolution, a revolution of the poor seeking bread and justice. Our revolution will not be armed, but we want the existing social order to dissolve, we want a new social order. We are poor, we are humble, and our only choice is to Strike in those ranches where we are not treated with the respect we deserve as working men, where our rights as free and sovereign men are not recognized. We do not want the paternalism of the ranchers; we do not want the contractor; we do not want charity at the price of our dignity. We want to be equal with all the working men in the nation; we want a just wage, better working conditions, a decent future for our children. To those who oppose us, be they ranchers, police, politicians, or speculators, we say that we are going to continue fighting until we die, or we win. WE SHALL OVERCOME.

Across the San Joaquin Valley, across California, across the entire Southwest of the United States, wherever there are Mexican people, wherever there are farm workers, our movement is spreading like flames across a dry plain. Our PILGRIMAGE is the MATCH that will light our cause for all farm workers to see what is happening here, so that they may do as we have done. The time has come for the liberation of the poor farm workers.

History is on our side.

¡VIVA LA CAUSA!


Plain-view
Strathmore
Springville
Waukena
Wood-ville
Octol
El. 454
Porterville
Tipton
Poplar
Ponca State Hospital
Terra Bella
Pixley
Earlimart
Fountain Springs
Ducor
Orris
White River
Richgrove
Trocha
Delano
Pond
Jasmin
Woody
Mc Farland
Famoso
Wasco
El. 335
Minter Field
Pine Mt 4085
Shafter
Kern River
Oildale
Rio Bravo
Rosedale
East B
BAKERSFIELD
Edison
SAN JOAQUIN
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51
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11
5

DELANO GRAPE STRIKE EXHIBITS

EXHIBIT I

THIS IS PAGE 5 OF *PRAVDA*—JULY 3, 1966

3 июля 1966 г. ● № 184 (17501) — ПРАВДА — 5

МУЖЕСТВЕННЫЙ ГОЛОС АМЕРИКАНСКИХ КОММУНИСТОВ

Поворотный пункт

Гэс ХОЛЛ, Генеральный секретарь Компартии США



ПЯТЬ ВОЛНУЮЩИХ ДНЕЙ

СИЛА ВЕЛИКИХ ИДЕЙ

Джозеф НОРТ, Американский публицист

Политика империализма основана на просчете

ГОВОРЯТ ДЕЛЕГАТЫ СЪЕЗДА

Мы победим!

Бетина АПТЕКЕР.

Изучаем жизнь

Гертнальд ЭЛЛИСОН

Главная задача — единство

Джозеф УЭСТ.

И. КУДЮМОВ, С. ЛОСЕВ

Ковать союз рабочего движения и негритянского народа

За полное равноправие

Генри УИНСТОН

Национальный председатель Коммунистической партии США

СПОКОЙСТВИЕ И БЕШЕНСТВО

Г. БОРОВИК.

ОТ ВСЕЙ ДУШИ ПОЗДРАВЛЯЕМ

В. ГОРБУНОВ

Материалы этой страницы подготовлены собственными корреспондентами «Правды», АПН и ТАСС

EXHIBIT I—Continued

ENGLISH TRANSLATION

The XVIII Convention of the Communist Party of the USA recently completed its work. This event is an important milestone in the development of the American Communist movement. It attracted attention in the United States of America. All the progressive societies of the world followed its work closely.

The Convention analyzed the current domestic and foreign policies of American imperialism, defined the basic problems of the party in its work among the masses, demonstrated the ideological solidarity of the Communists, their loyalty to the spirit of proletarian internationalism. On this page we publish materials dedicated to the convention of American Communists.

Five Emotion-Filled Days

These lines are written under the impression of an event, which will long be remembered. From the 22nd to the 26th of June, here, in New York, the citadel of American capitalism, we witnessed a convention of USA Communists, a convention of those, who have dedicated their lives to the incredibly difficult, but noble struggle for enlightened ideals—to the happiness of their people. Those were truly five emotion-filled days.

The XVIII Convention of the Comparty [Communist Party] of the USA had just finished its work. Time is needed to fully appreciate its meaning. One thing, however, is evident already. The wide-spread response it received from the press and especially the gnashing of teeth from the reactionary opposition, the notes of apprehension that sounded from the pages of the bourgeois papers—attest to its success.

The very fact that an open meeting was held signified in itself the failure of the attempts made by the opposition and the authorities to isolate the party, to exhaust it through endless persecution, to drown the voice of the Communists. And, probably, the strongest impression gained in following the work of the convention —was the remarkable militant spirit of the delegates, members of the party.

The Communists of the United States gathered at their convention in a setting of sharply accentuated political and socialistic processes taking place in the country and of the growth of political consciousness on the part of the masses. A hitherto unprecedented wave of demonstration in protest against the aggressive policy of American imperialism, especially in connection with the barbarous war in Vietnam, rolled over the country. Strikes are on the increase. In spite of the conciliatory policy on the part of the right wing prof-leaders [trade union leaders] there are more and more strikes. For instance, the demonstrations of the transport workers at the beginning of this year, the excruciatingly difficult struggles of the agricultural laborers in California and in Texas, and many more instances show exactly how much the reasoning of the apologists of monopolies is worth, concerning the bringing about of "harmony" between the interests of work and capital. There is a growth, in spite of the preventive measures taken by the ruling class, in the scope of the struggle on the part of the Negro population of the South and of the city ghettos of the North for elementary civil rights, for a life worthy of a human, against violence and poverty.

All these and many more actual problems of the struggle were the focal points at the convention.

There were no meetings at the convention at which were not heard angry voices protesting against the barbarous war of the United States in Vietnam. The words of the orators had an oath-like intensity when they declared that the Communists of the United States will not rest until all the American soldiers are brought home.

In answer to a message of greeting from the Vietnam Labor Party that came from Hanoi, the convention expressed brotherly solidarity with the heroic struggle of the Vietnamese for freedom and independence.

One of the most memorable events at the convention was the discussion of the Negro problem. It seemed that the steps of those who took part in the march on the city of Jackson (State of Mississippi) could be heard in the hall, although the capital of that State is separated from Webster Hall in New York by hundreds of miles. The same anger and determination sounded in the speeches of the Negro delegates at the convention as at the meeting in Jackson. But there was also a difference. Communists know very well what needs to be done in order to bring the

EXHIBIT I—Continued

heroic struggle of the Negro people to a real, not illusory equality so that instead of the colored barrier of three hundred years standing there would be no invisible wall of false racial integration, which would just as mercilessly doom Negroes to the position of second-class citizens.

The convention declared that on the scales in this strife must be thrown millions of workers organized into trade unions and mass Negro organizations. The path leading to unity between the Negro and the workers' movements—is the mutual strife for common interests in the factories, on the plantations, in the mines, and at the electoral precincts, the liquidation of any racial discrimination in industry and in trade unions. The convention warned that the trade unions alone will not be able to resist the advance of monopolies on the standard of living and whatever gains the workers have already made.

It is not in a vacuum that the struggle for the masses of Negroes is developing. The Johnson Administation, the branching machine of the Democratic Party, and the trade union bureaucracy are trying to divert the stream of the Negro movement into a safe (for themselves) channel. But now the civil rights movement is presenting demands for factual political and economic equality that the ruling circles cannot buy off with minor concessions.

The convention emphasized that complete liquidation of exploitation and race persecution is possible only under socialism. Communists think, however, that even now —by means of a struggle during which the masses will be convinced of the necessity for a radical reconstruction of the political, economic, and social life of the country, will it be possible to achieve the undermining of the system of segregation and racial inequality.

The convention directed special attention also to the work among the agricultural laborers and national minorities—one million Puerto Ricans and five million Americans of Mexican descent—the most deprived of the sixty-five million inhabitants, whom the so-called American prosperity has not reached. In the words of Congressman Henry Gonzales, Americans of Mexican descent "live in a vast belt of poverty, stretching from East Texas through South Texas and the Rio Grande Valley into New Mexico, Arizona, Colorado, and Southern California". These "thousands miles of poverty resulted in a movement: the heroic struggle of the farm workers of Delano (California) has lasted nine months, "For nine months our children have not seen milk"—according to a plea to aid the strikers, which was signed by Cesar Chavez. When a Mexican laborer read this plea, the convention delegates immediately—right there in the hall—began mustering the means of aiding the strikers.

The convention set the party's line on basic questions of the struggle for economic and social demands and for democratic rights and liberties. As the primary political task, in its decisions, an appeal was written to Communists to concentrate their attention on the election this year of candidates of a peaceful line and to cause the defeat of ultra-right candidates, who have already become feverishly active again in preparation for the presidential elections of 1968.

In questions of the international Communist and labor movement, the Communist Party USA drew on the resolutions of the 81st Communist and Labor Party Conference of 1960. In appraising the character of the period, Gus Hall stressed that although the forces of revolution and national liberation had suffered temporary set-backs in this or that country (Indonesia and Ghana), it is not a divergence from the basic tendency of historical development. The Soviet Union, proceeding along the road to communism, represents the main bulwark of the forces of the national liberation movement and of peace. Hall called for the strengthening of the unity of the international communist movement. By this very fact the convention showed the authentic internationalism of the party. "The subsequent refusal of some parties to join in the single fight against imperialism and the continuation of a campaign of calumny and slander against other Marxist parties of the working class and against other socialist governments daily intensifies the political damage already done", proclaimed Gus Hall in his summary report.

The XVIII Convention of the Communist Party evoked great interest and careful attention not only among its friends, but also among the vehement enemies of the Communists in the USA. The local "yellow paper", *The Daily News*, reacted to the convention with an editorial gushing bile and hatred, in which the United States Government was extolled for its refusal to allow "reds"—the foreign delegates in-

EXHIBIT I—Continued

vited by the party—to attend. The State Department, as is well known, refused visas to these public figures and representatives of fraternal parties.

The [J. Edgar] Hoover school was felt in the questions of several reporters: they obstinately asked how the communists intend "to infiltrate" the civil rights and youth movements.

The Secretary of the Negro Commission of the Communist Party, Claude Lightfoot, a Communist of 35 years' standing, parried, with a grin, a question put to him by one of the journalists, as to whether the Communists had received the "permission" of or an "invitation" from the leaders of the Negro organizations to take part in their work. The problems and woes of the Negro people, answered Negro Lightfoot, are my problems, and we need no one's permission or invitation in order to fight for the rights of the Negro; we have been doing just that for many years. We have no reason to "infiltrate" because, as it is, we live in the thick of the woes and suffering of the Negro people.

In White's articles in the *Washington Post* about the menace of the "new people's front" and in the over-all appraisals in other newspapers is manifest the alarm of the reaction that the convention will promote a broadening of the movement for peace, for democracy and civil rights, and the struggle against the unholy alliance of big business with governmental apparatus.

The delegates left the convention with instructions to activate, as much as possible, efforts in their respective areas to increase the membership of the party and to strengthen the solidarity of its ranks.

The American communists are not nursing any illusions. They understand that the threat to the very existence of the party has by no means been removed. The McCarran Law is still in force. The Justice Department threatens to begin new persecution of the party. In ten states the Communist Party is illegal. In nine states membership in the party is considered a crime. But the American communists know that armed with progressive Marxist-Leninist teachings, they are on the true path and this gives them strength and confidence in the battle for a bright future.

New York

N. Kurdyumov
S. Losev

EXHIBIT II



EXHIBIT II
Prior Involvement: Here we find the "rainbow of ideologies" among these organizers.

Citizens for Farm Labor

"EQUAL RIGHTS FOR AGRICULTURAL WORKERS"

P.O. Box 1173
BERKELEY, CALIFORNIA

AN OPEN LETTER TO PRESIDENT JOHNSON

ADVISORY BOARD

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REV. DR. HAROLD WILSON
MARSHALL WINDMILLER
THOMAS WINNETT
LUIS ZARATE
ROBERT NOLAN, M.D.

CHAIRMAN: HENRY ANDERSON

SECRETARY: WENDY GOEPEL

Dear Mr. President:

We of CITIZENS FOR FARM LABOR welcome you to California. We applaud your pledge, on June 6, to "help the underprivileged and the underpaid by extending minimum wage and unemployment compensation," and your pledge, on that same date, to transform poverty from "a real menace to a remote memory."

We respectfully urge you to carry your War on Poverty into the agricultural areas of California and the Southwest: characterized by corporate farming and underprivileged, underpaid workers. One of the first interest groups to oppose the War on Poverty was the American Farm Bureau Federation. This most powerful of all pressure groups evidently does not believe that the nation's more than two million hired agricultural workers should have the opportunity to help themselves rise into the Great Society which you have envisioned. Year after year, the agricultural industry has opposed minimum wage, unemployment insurance, child labor legislation, and the right to engage in free, collective bargaining for farm workers.

Southwestern growers will soon be seeking further extension of Public Law 78, the bracero program. Under this system, the Federal Government recruits workers from an underdeveloped foreign nation, to work at 60¢ to $1.00 an hour. American citizens, who cannot survive at such wage levels, are forced into the ranks of the unemployed. Governor Brown, a majority of the California Democratic congressional delegation, and increasing numbers of other informed Americans, are coming to recognize that this is no way to wage war on poverty. We urge you to oppose all attempts to extend the bracero system.

We urge you to support legislation enabling the agricultural workers of the United States to share at last in the rights which other workers have received under the New Deal, the Fair Deal, and the New Frontier: wage and hour laws, child labor laws, unemployment insurance, and the guarantee of free collective bargaining. We respectfully suggest that this is the effective way to wage war on poverty among the most poverty-stricken and forgotten Americans of all.

Very sincerely yours,

CITIZENS FOR FARM LABOR

EXHIBIT III



Agricultural Workers Organizing Committee (AWOC)
Headquarters, Delano (3/4/66)



National Farm Workers Association (NFWA)
Headquarters, Delano (3/4/66)

EXHIBIT IV

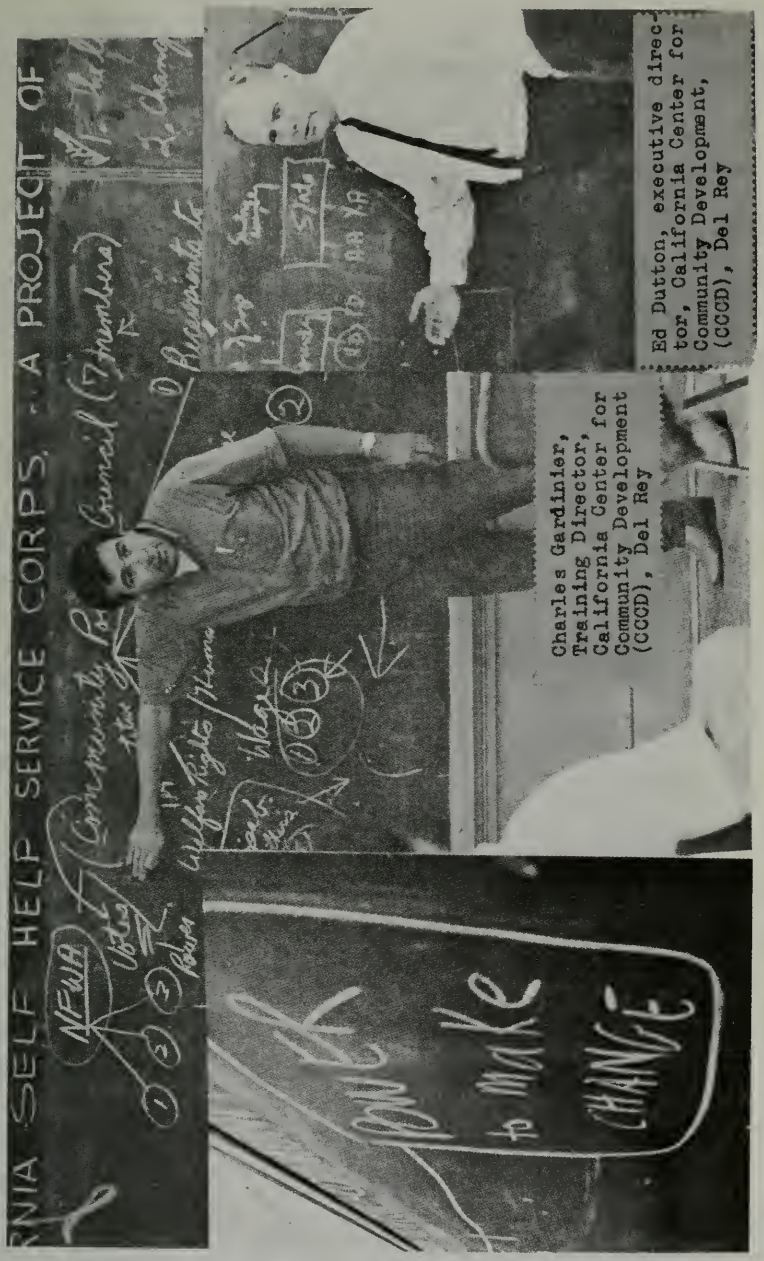
"Rules for Pickets." Obtained from the NFWA on 3/5/66

Rules for pickets

1) This is a totally non-violent strike. If you feel that at any time you cannot remain non-violent, tell the Picket Captain and leave.
2) No guns, knives, or anything else which may be thought to be a weapon should be carried on picket line or in cars.
3) Picket Captain is in charge of group.
4) Keep off all private property.
5) Keep off highway.
6) Unless informed otherwise by Picket Captain, picket area is dirt patch between highway and telephone poles.
7) Do not block entrances, driveways, cars trucks, or strikebreakers.
8) Do not talk to press, growers, foreman, or police. Refer them to Picket Captain.
9) When talking to strikebreakers, do not threaten or use obscenities.
10) Keep group together. If you must leave, inform Picket Captain.
11) When group moves to new area, make sure you know how to get there. Do not caravan when driving. Keep 1/4 mile apart.
12) No drinking before goint to the picket line. No drinking in or around the office, the house behind the office, in cars or anywhere on the premisis.

FARM WORKERS ASSOCIATION 102 Albany Street, Delano, Calif.

EXHIBIT V



California Self-Help Service Corps of CCCD

EXHIBIT VI



Delano, Mar. 17, '66



#8 (In foreground Cliff Vaughs, L.A., Regional Director SNCC From Mississippi in Dec. Delano, Apr. 1966



#7 l. Manuel Granday, NFWA; 2. Larry Itliong, AWOC; 3. Rabbi Stephen Forstein; 4. Luis Valdes

Pictures of Delano Scene

EXHIBIT VII

AVOC Guest Register for October 30, 1965

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Events of the Day

Ross Clark = brought $125.00 check: donation plus $10.00 donation from Bul Simpson of Altadena, Cal.

Lacey Locker = C. D. C. Migrant Labor Camp

David Williams = Local 1675 - A.F.S.C.M.E. American Federation State County + Municipal Employees, Contra Costa County

Sam Kushner = Reporter + Photographer The Peoples World.

Visitors

Louise Berman
Wilson Halley
A. Spellman
Anita Palm
Kenneth Whipple
Barbara Gibson
Libby Swartz
R. Dimple
David William
Marcia Goldstein
R. Goldstein
P. Scott
Peggy McGinnan
R. Fisher
Sonny Waters
Harry Baker
John Tipeld
Dick Sample
Bob Offnear
Gene Nelson
Fred Herch
Ross Clark
H. Perl
Gail Atkinos
Stephen Engleman
Peggy Morgan
Jay Morgan
Bob Bockwinkle
Rita Strickland
Jonh Perkins
Erma Gordon
Gloria Polanski
Dave Brent
Linda Smith
Steve Kustic
Jack Clements

Mr. McLeary was with the Millswright Local 102 before he passed away. Mrs. Ruby McLeary brought us a gas range and two refrigirators for our A.W.O.C. Kitchen. She brought all these on a pick-up today.

EXHIBIT VIII

AWOC Guest Register

176

11/6/65

Events of the Day

A truck-load of food from Riverside, Clothings and cash was brought in under the leadership of Mr. Tim Sullivan address 5599 Corwin Lane Riverside. With him were Robert E. Baylis, student; Jim Hamilton, Jim Hamilton, Noel Jette, Student U.C.R, Kitty Zetz, Student, also UCR.; Larry Raffalovich, Ross Sullivan, Bookert T. Harris, Floyd Sweet, Cove Riv.;

Other guests are:

Jacque Haring - student, Oakland
Anita Henry " Mills College, Oakland
Betty Beadle " " " "
Patrick A Fong " S. J.S. Berkeley
John Spier - Teacher, Mills College, Oak.
Pauline L. Fong " " " "
Susan Green Student, L.A.
John H. Perkins " Berkeley
Kathleen Mahon " " UC.
Paul Rosenstan L.A.
mike Golden Student, Berkeley
Carol Hatch " " "
Toño Villamar " Mexico
Carlos Pereira " "
Sue Dasburg " UC Santa Barbara
Connie Fihalter " " "
Steve Tuttle " Cal-State, L.A.
Ed Wiesen " Sacr. City College
Wilton Ortega " " "
Larry Jackson " " "

EXHIBIT VIII (2)

AWOC Guest Register

11/6/65 - cont'd 177

Peter Risley, mills Valley
Bill Hutchison, Claremont Chaffy College
Warren Tooy Ontario, " "
Janine Beiderman, L.A.
Marian Gordon L.A. State College
Kendra Harris Cal State College L.A.
Marilyn Friedman " " " "
Kendy Kepler U.C. Santa Barbara
Maurice Kamm L.A.
David Mintoff L.A.
Charles Chavez - U.A.W. ~~#~~ member
arrived 2 hrs ahead of the caravan Fremont, Calif.
Harold Hodson, Corresponding - Sec.
Butchers Local Union # 193, Bakersfield.
Tim Barr, Editor, Fremont Times, Calif.
Pete Teddy ~~Fremont~~ also Fremont, "

— At 3:30 the "United Auto workers" Caravan from Fremont Calif arrived. With them, they brought lots of food, clothings and fund.

— Bro. Pete Soto, alternate committee man, and Alameda Central Labor Council delegate for U.A.W. Local # 1364 headed the Caravan.

Members of the caravan are as follows

1. Mrs. Soria Soto
2. Chas Chavez, U.A.W. arrived 2 hrs earlier
3. Virginia Kiezel - Fremont,
Manuel Sunshine - San Francisco
Saul Wachter UAW member
Mrs Billie wachter UAW
Mathew Wachter UAW Son
Daniel Soto UAW "

EXHIBIT VIII (3)

AWOC Guest Register

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11/6/65 - cont'd

Tom Eagle — member
Tom Sanders - Socialist worker Party, Berkeley
Hal Verb " " " S.F.
Frances R. Bell a friend
F. D. Jones — Washington Township Teachers
Mr. & Mrs. Ray Ordino, Oakdale Calif.
Mr. Jesse Portillo member
Richard de La Cruz "
Professor John C. Leggett, Berkeley
Pamela Newton "
John Magney S.F.
Dennis Kramer Placerville
Luisa Gratz

EXHIBIT IX

U.S. DEPARTMENT OF LABOR
BUREAU OF APPRENTICESHIP AND TRAINING
WASHINGTON, D.C. 20210

January 14, 1966

Mrs. Dolores Huerta
P. O. Box 2277
El Paso, Texas

Dear Dolores:

Thanks for letting me know where you are.

I've already sent ahead your GTR's for air fare to Washington and return. However, in view of your situation, here's what I'm going to do:

I am enclosing another GTR.

The location of flight origin is left blank. Also the location of the destination on return is left blank.

Go to the airlines office and have them type in the necessary details. Be sure that the price of the tickets are written in the box on the lower left hand side of the white copy of the GTR.

If the TR I sent to you earlier is forwarded to you from Delano, save it. Bring it to me here in Washington. I'll cancel it out. If you have received and used the original GTR sent to Delano, save the GTR enclosed and bring it to me in Washington.

Let me know as soon as possible what your plans are with regard to where you'll be until the day before the flight to Washington. I will want to send you the agenda, including the location of the meeting. I do not have these firmed up finally as yet.

I'll be delighted to see you again and hear from you all of your recent adventures. If possible, set aside Thursday evening for a conversation. Take good care of yourself.

Sincerely yours,

Harold Barrett, Jr.
Executive Secretary
ACEOAT

Enclosures

EXHIBIT X

THE MOVEMENT

Editorial Offices
449 14TH STREET
SAN FRANCISCO
CALIFORNIA 94103
MA 6-4577

Published by
The Student Nonviolent Coordinating Committee of California

A LETTER FROM CESAR CHAVEZ

Dear Friend:

I have been a reader of THE MOVEMENT, the West Coast newspaper of the Student Nonviolent Coordinating Committee, since last August.

During the first four months of our Delano strike, THE MOVEMENT was one of the very few sources of information about this historic struggle.

THE MOVEMENT publishes, more than any other paper I know, the news of the upheavals among low-income and minority people in this country. The people who write for THE MOVEMENT are themselves involved in these struggles. This is why the paper has been valuable to the staff and members of the National Farm Workers Association.

I urge those who support us to subscribe to THE MOVEMENT.

Viva la causa.

Cesar Chavez

Cesar Chavez
General Director
National Farm Workers
Association

Subscriptions to
THE MOVEMENT are
$2 a year.

EXHIBIT XI

SPARTACIST-WEST

Vol. 1, No. 6 | Published occasionally by the Bay Area Spartacist | FREE
7/9/66 revised | Committee, P.O. Box 852, Berkeley, California. | ISSUE

The Delano Strike

WHAT WILL IT TAKE TO WIN?

The late Dow Wilson, Painters' union militant, in commenting on the Delano grape strike, had this to say: "When a strike enters the boycott stage, it is already lost."

Unfortunately, this is generally true. A boycott is not really going to do much financial damage to DiGiorgio. But there is another approach that has a good chance of succeeding where a boycott will not.

That is to spread the strike; to close down the numerous DiGiorgio and S & W plants that have continued to operate; the warehouses, the canneries, the wineries, even a sawmill. To accomplish this would be no easy matter, but shutting down even half of DiGiorgio's total production for two

(Continued on inside pages)



Both the NFWA pickets above and a group of Catholic priests have asked Teamster leader Einar Mohn to abandon plans for having his organization serve as DiGiorgio's company union. The Teamster membership has yet to be heard from in this matter.

EXHIBIT XI (2)



This drawing by the Mexican artist Fernando Castro Pacheco, illustrates the cover of the current issue of El Malcriado, Delano bi-weekly. The NFWA Plan of Delano states: "We are sons of the Mexican Revolution, a revolution of the poor seeking bread and justice. Our revolution will not be armed, but we want the existing social order to dissolve . . ." Unfortunately, history provides no examples of triumphant unarmed revolutions.

EXHIBIT XII



Donna Sue Haber Stokely Carmichael, SNCC

Interior NFWA Office
Delano, Feb. 9, 1966

EXHIBIT XIII



EXHIBIT XIV



Paul Booth, 22, Chicago; National Secretary, Students for a Democratic Society, NFWA Headquarters, Delano (3/10/66)

EXHIBIT XV



Sam Kushner, *Peoples World*, in a state car in Delano

EXHIBIT XVI

El Malcriado No. 39 June 30, 1966

DON'T BUY DI GIORGIO

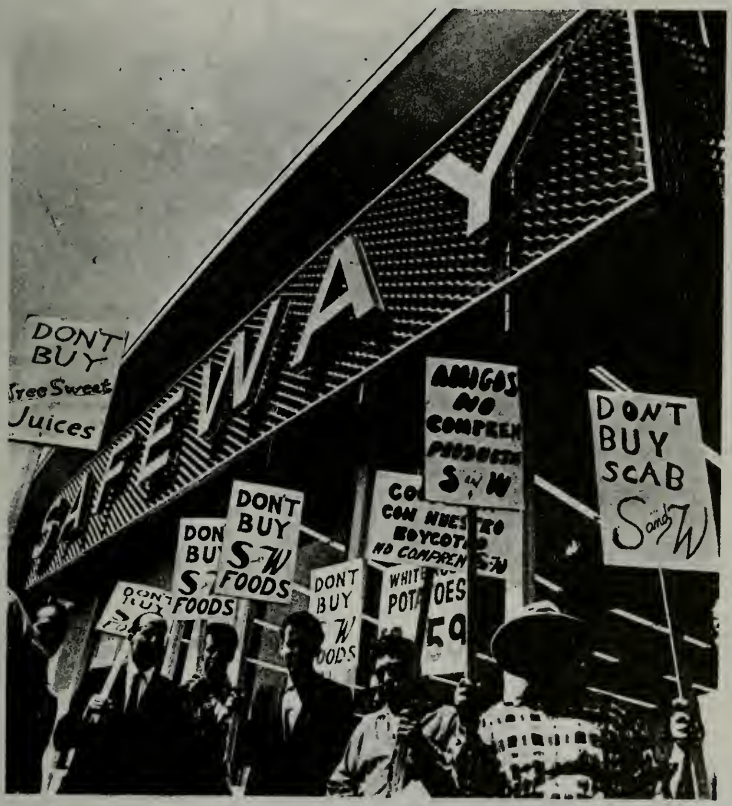
Treesweet
White Rose
Redi-Tea
Pique

Avoid:

S & W FINE FOODS

Premier
Sun Vista
Sunnyland
Jolly Farmer

-24-



MAKE DI GIORGIO DEAL JUSTLY WITH THE DELANO FARM WORKERS

1 PESO
CORREO
AEREO
NFWA

Send Form 3579:
Farm Worker Press, Inc.
Box 1060
Delano, California, 93215

EXHIBIT XVII



EXHIBIT XVIII



FARM WORKER PRESS

EL MALCRIADO THE VOICE OF THE FARM WORKER

P. O. BOX 1060 DELANO, CALIF.

Dear Friend:

As a reader of our paper you know that El Malcriado is truly the "Voice of the Farm Worker" and that it is the only paper in California--or in the whole United States--that is completely on the side of those who work in the fields.

Likewise you know of the struggle for justice which is being made, not only in the fields, but in the pages of our newspaper, and in the books and other materials we publish. Now it has become possible for you to participate as an individual in this great enterprise., already successful and growing larger and more powerful every day.

El Malcriado and Farm Worker Press has been given by the State of California, a PERMIT TO ISSUE STOCK. Each person who holds one share of stock becomes an owner of Farm Worker Press and has one vote in all matters concerning El Malcriado and the Press.

Now, farm workers and other readers may become owners of our own newspaper, and together we can be a powerful voice throughout the West, fighting for our rights, communicating with our brothers everywhere and educating ourselves in many ways.

Our money, sacrificed for this great cause, will make our paper strong. Our votes--one for each man who owns shares--will insure that our paper will always represent us and will speak the truth of our cause.

Each owner of a share will be presented with a stock certificate which is proof of his ownership of El Malcriado. His name will appear in El Malcriado, and he will have the privilege of attending our annual Fiesta and voting at all meetings. In addition each shareholder will be entitled to a free gift from Farm Worker Press, of his own choosing.

SUPPORT YOUR OWN NEWSPAPER. BECOME A PART OF IT NOW. BUY A SHARE OF FARM WORKER PRESS WHICH IS YOUR OWN FREE PRESS. SEND THE COUPON NOW. EACH SHARE COSTS $10.00. IF YOU CANNOT AFFORD A FULL SHARE, GET TOGETHER WITH A FRIEND OR RELATIVE.

Fill out the form on the reverse of this letter and send it today together with $10 for each share of ownership that you want. You will be sent a certificate and a free gift, together with a copy of the by-laws of the Press and notification of all meetings and functions. Just as you need El Malcriado--holding forth the light of truth--El Malcriado needs you and your support.

Thank you.

THE DIRECTOR OF FARM WORKER PRESS

EXHIBIT XVIII (2)

Farm Worker Press
Box 1060-Delano, Calif.

DATE_____

I want to become an owner of EL MALCRIADO and the Farm Worker Press. Send _____shares of stock to me. (Each share costs $10.00). I understand that each shareowner has only one vote and that our publications are for truth and not for profit.

NAME_____ AMOUNT ENCLOSED $_____

STREET ADDRESS_____ Are you a farm worker? Yes ☐ No ☐

CITY & STATE_____ Are you a member of the United Farm Workers (AFL-CIO) Yes ☐ No ☐

HOW WILL YOU HELP YOUR NEWSPAPER?

Send News? ☐ Sell Ads? ☐ Sell Papers? ☐ Get Subscribers? ☐ Help Write the Paper? ☐

Help with Office Work? ☐ Other?_____

WHAT SHALL WE SEND YOU FOR YOUR FREE GIFT? Check one only.

26 Issues of El Malcriado in English? ☐ 26 Issues of El Malcriado in Spanish? ☐ Basta? ☐ Viva La Causa Record? ☐ Don Sotaco? ☐

HUELGA in Fnglish? ☐ HUELGA in Spanish? ☐ 15 Back Issues of El Malcriado? ☐ El Corrido de Delano Record? ☐

EXHIBIT XIX

EL TEATRO CAMPESINO

(FARM WORKERS THEATRE)



NFWA

JULY 16 / 1966 8:00 pm WHEELER AUDITORIUM U.C.

ADMISSION: General-$1.50, Student- $1.25

"El Teatro Campesino is somewhere between Brecht and Cantinflas.... Linked by a cultural umbilical cord to the National Farm Workers Association, the Teatro lives in Delano as part of a social movement....."

Luis Valdez

BENEFIT FOR THE NATIONAL FARM WORKERS ASSOCIATION

Sponsored By Student Committee For Agricultural Labor-------

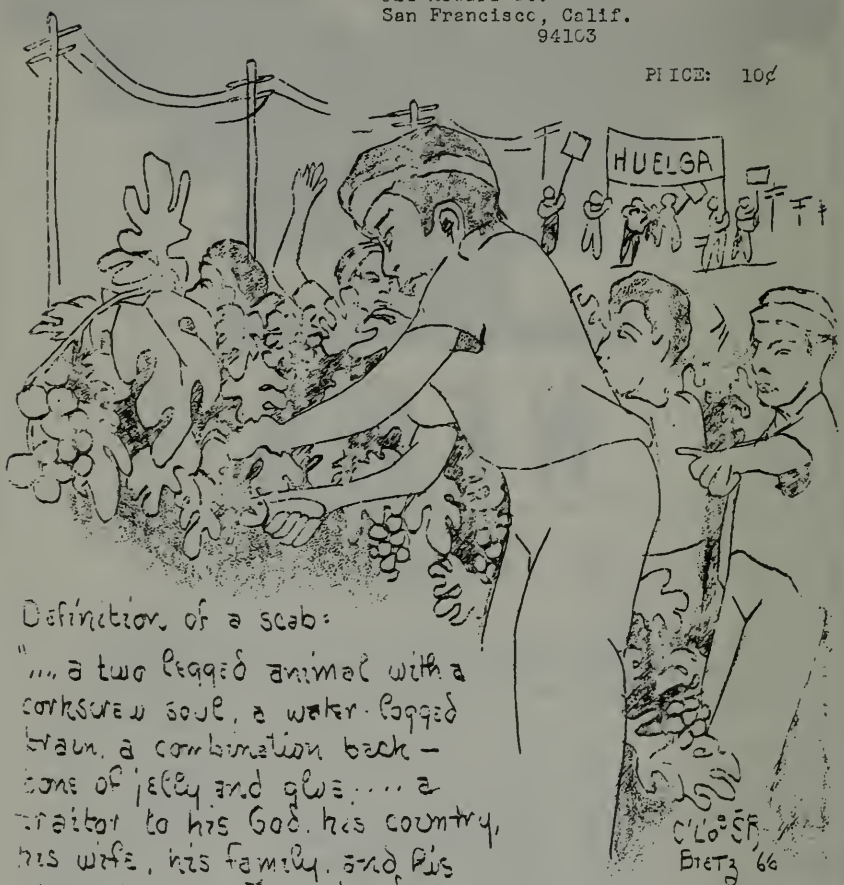
NEW NFWA REGIONAL OFFICE
1801 Fairview----Berkeley
654-4147

EXHIBIT XX

GRAPE STRIKE REPORT NUMBER 1

Students for a Democratic Society
San Francisco Regional Office
924 Howard St.
San Francisco, Calif.
94103

PRICE: 10¢



Definition of a scab:

"... a two legged animal with a corkscrew soul, a water-logged brain, a combination back-bone of jelly and glue.... a traitor to his God, his country, his wife, his family, and his class." .... Jack London

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PROGRESS REPORT TO THE LEGISLATURE

1967 REGULAR SESSION

by the

SENATE PERMANENT FACT FINDING COMMITTEE ON WATER RESOURCES

Pursuant to Senate Rule 12.5

- **Federal Water Project Recreation**
- **Oroville Dam Investigation, Consultants' Report**

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SENATE
OF THE STATE OF CALIFORNIA

HON. ROBERT H. FINCH
President of the Senate

HON. HUGH M. BURNS
President pro Tempore

JOSEPH A. BEEK
Secretary of the Senate



In Memoriam

This report is dedicated to the memory of William J. "Bill" O'Connell, who tirelessly and unselfishly contributed his time, energy, and talent to the conservation and development of California's water resources. The counsel and guidance he provided this committee while serving as engineering consultant were of inestimable value and will be sorely missed.

His contributions to water resources development and his achievements in seeking solutions to the difficult problems of waste disposal, air and water pollution, and water quality control will live as perpetual monuments to his memory.

William J. "Bill" O'Connell

May 5, 1903–November 27, 1966

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LETTER OF TRANSMITTAL

California Legislature
Senate Fact Finding Committee
on Water Resources

Senate Chamber, State Capitol
Sacramento, January 30, 1967

Honorable Robert H. Finch
President of the Senate
and
Gentlemen of the Senate
Senate Chamber, Sacramento

Mr. President and Gentlemen of the Senate:

The Senate Fact Finding Committee on Water Resources, as authorized by Senate Rule 12.5, submits herewith its 1967 progress report on matters referred to it for study during the 1965–1967 interim period.

Respectfully submitted,

James A. Cobey,
Chairman
Eugene G. Nisbet
Carl L. Christensen*
Gordon Cologne
Hugh P. Donnelly
George Miller, Jr.
Paul J. Lunardi

William Symons, Jr.,
Vice Chairman
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John G. Schmitz
Jack Schrade
Harold T. Sedgwick
Howard Way

*I do not concur with Conclusion No. 8 or Recommendations Nos. 3 and 4.

Chapter I

FEDERAL WATER PROJECT RECREATION

FEDERAL WATER PROJECT RECREATION

INTRODUCTION

This chapter of the committee's 1967 progress report to the Legislature deals with the problem of providing recreation and fish and wildlife enhancement facilities at federal water resource development projects in accordance with the new Federal Water Project Recreation Act.[1] This report also examines the legislative policies established in Assembly Bill 118,[2] the Porter-Cobey Federal Water Project Recreation Act, which governs participation by the State of California pursuant to Public Law 89-72, and explores those practical problems which serve to limit such participation by the State of California and local governmental agencies within the state.

Inasmuch as the Porter-Cobey Act has provided for participation in the development of recreation and fish and wildlife enhancement facilities with federal water development agencies on a joint basis by the State of California and local governmental agencies and in view of the large financial commitments such cooperating agencies will be required to make, this committee has also sought to evaluate not only the ability of local government to participate pursuant to Public Law 89-72 but the ability of the State of California as well.

In essence, the Legislature through the enactment of Chapter 143, Statutes of 1966, has committed the State of California, alone, or in cooperation with local government, to such participation provided the prerequisite studies and findings specified in Chapter 143 are met.

It must be kept in mind that the Federal Water Project Recreation Act and the Porter-Cobey Act are new and little practical experience in the operation of either has been obtained. This lack of practical experience in the operation of the state and federal acts has made it impossible for the committee to evaluate all possible ramifications of these new statutes. However, preliminary administrative guidelines and legal interpretations have made it possible to explore some of the more obvious problems which may be encountered in implementing both the state and federal acts.

The real magnitude of the federal act and the state implementing legislation are not as yet completely understood by most people. Aside from the routine administrative problems which will undoubtedly be encountered, these acts raise several policy questions of considerable weight which must be answered in the near future.

If the State of California is to participate in the development of recreation facilities at federal water resource development projects, the extent of the financial commitment must be understood at the outset and the appropriateness of such participation defined in the light of the state's financial commitments to established and ongoing state recreation and wildlife programs.

[1] Public Law 89-72.
[2] Chapter 143, Statutes of 1966.

Additionally, if the state is to commit itself to the large financial contributions which will enevitably be required, the Legislature must, of necessity, concern itself with the adequacy of the investigations of each project's recreation and fish and wildlife potential and the planning that is being done by the federal agencies to incorporate such elements as project purposes.

CONCLUSIONS

1. The Federal Water Project Recreation Act (PL 89-72) is a forward, although belated, step in providing a means of planning and funding recreational development and fish and wildlife enhancement facilities at federal water resource development projects. However, even though the federal government through the enactment of Public Law 89-72 has now assumed a federal responsibility in the planning and funding of such facilities, it has failed to assume a degree of responsibility for the development of such facilities at its water projects commensurate with the responsibility which has been recognized by the State of California for State Water Project facilities.

2. The fiscal policies established by the Congress in Public Law 89-72 fail to recognize the practical financial limitations of nonfederal public agencies, including state government, in assuming the large costs associated with the development, management, operation, maintenance, and replacement of recreation and fish and wildlife enhancement facilities at federal water projects. Because of this failure on the part of the federal government to recognize the practical financial limitations of nonfederal public agencies, it must be concluded that, as a practical matter, the Federal Water Project Recreation Act will, at best, achieve only limited and isolated success. This, even though the purposes as stated in Public Law 89-72 are worthwhile, beneficial, and, in most instances, necessary. The Federal Water Project Recreation Act, as a practical matter, will not be a good and usable act until the capital costs of recreation and fish and wildlife enhancement facilities are fully paid. The financial unattractiveness of participation to nonfederal agencies is obvious.

3. It became evident during the course of this committee's study of Public Law 89-72 and Assembly Bill 118 that local governmental agencies are interested in assuming a role in the development of recreation and fish and wildlife enhancement facilities at federal water projects commensurate with their financial ability and that such agencies are managerially capable of operating and maintaining these facilities. However, it was also evident that local government is, except in certain isolated instances, financially unable to assume 50 percent of the separable recreation and fish and wildlife enhancement costs together with all of the operation, maintenance, and replacement costs associated with such facilities.

4. It must additionally be concluded that, at the present time and under the existing fee structure, it is not in the best interests of the State of California and that it is beyond the state's fiscal capabilities to assume the role of the nonfederal participant pursuant to Public Law 89-72 at each and every federal water project to be authorized for construction in California.

5. The State of California should analyze proposed participation in the development of recreation and fish and wildlife enhancement facilities at federal water projects in the light of state financial commitments to established and ongoing state recreation programs. Such participation should be evaluated in terms of recreation requirements, the availability of similar facilities within the project area, and the needs and requirements of the state park system. When such participation is justified as a result of such objective evaluations, it should be only to the extent that it is of "statewide importance" as specified in Section 5094 of the Public Resources Code.

6. It became evident through this committee's investigation that there was some concern on the part of local government and certain private organizations over the lack of standardization of user fees at similar types of outdoor recreational facilities. While it is understood that the standardization of user fees present many difficult problems, it is the feeling of the committee that an attempt should be made to attain such a standardization at similar types of recreational facilities within specified geographical areas irrespective of whether such facilities are operated by federal, state, or local governmental agencies. Such a standardization of the user fee structures would serve to attain a broader use of the available facilities, would serve to reduce overuse and crowding at certain park units, and would not only reduce competition between the various operating public agencies but with the private sector of the economy as well.

7. It is also the committee's opinion that the user fee structure—and here we have evaluated only the user fee structure at water associated recreational facilities—are not commensurate with the type of facility being provided. The present user fee structure within the state park system in no way is reflective of the user's ability to pay and needs to be revised and updated in order to achieve an operational income more in line with operation, maintenance, and replacement expenditures.

8. In order to bring such income more into line with operating expenses it will also be necessary to attain a higher degree of control over access to reservoir recreation areas where large development expenditures are necessary. Such control is absolutely essential if the fiscal operation of such facilities are to be placed on a more economic basis.

9. There appears to be a great need for closer coordination between federal and nonfederal public agencies, particularly county government, during the early stages of formulation of federal water projects. This is necessary in order to assure that the desires of local government are considered during the early stages of the project planning for it is during this period that proposed changes are most readily incorporated into the project. Closer coordination with local government will help attain a greater consideration of all local development plans in formulating federal water projects. Such consideration is to a large degree presently lacking.

10. The present level of planning for the development of recreation and fish and wildlife enhancement facilities at federal water projects by federal water development agencies is inadequate. The present fund-

ing of necessary recreation and fish and wildlife studies is not commensurate with the funding of studies to justify other project purposes.

If the State of California and local governmental agencies within the state are to participate financially in the development and operation of such facilities such agencies have the right to expect that the studies and planning necessary to assure the inclusion of appropriate and adequate facilities will be made.

According to the Departments of Parks and Recreation and Fish and Game information developed by federal agencies concerning the recreation and fish and wildlife enhancement potential of their projects is not presently sufficient to enable them to make the determinations required by the Legislature in Assembly Bill 118.

It is the opinion of this committee that such planning activity is necessary and is properly the responsibility of the federal agency which proposes to develop the project.

11. Various constitutional and statutory provisions have vested the ownership of the state's fish and wildlife resources in the people and have made their conservation the responsibility of the state. One such provision reads, in part, "Fish and wildlife resources are the property of the people . . . and therefore their conservation is a proper responsibility of the state." [3]

In connection with federal water project development the nonfederal responsibility for determining the suitability of fish and wildlife enhancement measures is properly that of the Department of Fish and Game. Local agencies, as evidenced by their testimony at this committee's hearing, are not staffed with technically qualified personnel nor are they possessed of the operational capability to interpret technical fish and wildlife data and cooperate in the planning and development of such enhancement facilities as may be appropriate to a particular project.

Additionally, the Department of Fish and Game, if delegated this responsibility, will be in a position to achieve necessary and vital coordination with the state's established programs and responsibilities.

12. Participation by the State of California, acting through its Department of Fish and Game, in the development of fish and wildlife enhancement facilities at federal water projects presents another rather complex problem which must, of necessity, be decided by the Legislature.

It has been estimated by the Department of Fish and Game that the fish and wildlife enhancement facilities constructed in connection with the State Water Project pursuant to the Davis-Dolwig Act will entail minimum annual operation, maintenance, and replacement costs in excess of $1,000,000. It can reasonably be expected that such costs, in reality, may ultimately approach $2,000,000 annually.

Obviously, participation by the State of California in the development, operation, maintenance, and replacement of such facilities at federal water projects would involve substantial additional financial burdens.

[3] Section 1600, Fish and Game Code.

The Department of Fish and Game is a special fund agency which derives nearly all of its operating income from hunting and fishing license fees. It has been recognized by most individuals familiar with the programs and funding of the Department of Fish and Game that under the existing fee structure, the Fish and Game Preservation Fund will be inadequate to fund the operational requirements of the fish and wildlife enhancement features of the State Water Project let alone the substantial costs which may be associated with such purposes at federal water projects.

Therefore, the only source of funding the operation and maintenance of fish and wildlife enhancement facilities of the State Water Project is, obviously, the state's General Fund. *It should be understood by those both within and without the Legislature that the assuming of responsibility for this type of development at federal water projects will, in all probability, result in additional burdens upon the state's General Fund.*

The committee does not wish to imply that because of cost such participation is not desirable. In many instances it may well be. However, we do wish to emphasize that the benefits of such participation will have to be evaluated with a great deal of care. It will be necessary to develop an acceptable cost-benefit ratio approach in order to establish a standard, objective process for evaluating the potential fish and wildlife enhancement benefits.

13. The policies and procedures established by the Legislature in the Porter-Cobey Act to govern participation by the State of California pursuant to Public Law 89-72 are sound. General acceptance and support of these policies and procedures, with a single exception in the area of procedures governing the issuance of a letter of intent by the Administrator of the Resources Agency, was expressed by nearly all witnesses appearing before the committee.

Several witnesses were of the opinion that the requirement of legislative approval before issuing a letter of intent was cumbersome and unnecessary. These witnesses, including the Administrator of the Resources Agency, advanced a fairly strong and convincing argument for the repeal of this requirement. However, it should be noted that the case for the repeal of this provisoin was based entirely upon theoretical possibilities. The problems which might arise as a result of this requirement cannot presently be substantiated in fact because of the lack of practical experience in the operation of the act.

The committee wishes to acknowledge that the possible problems advanced in testimony before the committee may well be substantiated as practical experience in the operation of the Porter-Cobey Act is attained. The door should not be closed on the possibility of repealing or at least amending this provision.

However, such decisions should be deferred until such time as the problems are better defined, changes are supported by practical experience, and possible courses of legislative action brought into sharp focus.

RECOMMENDATIONS

The committee's recommendations concerning the policies and procedures established in Public Law 89-72 and Chapter 143, Statutes of 1966, are as follows:

1. The Congress of the United States be encouraged to amend Public Law 89-72 to place upon the federal government a higher degree of financial responsibility for the development of recreation and fish and wildlife enhancement facilities at federal water resource development projects. Specifically, it is recommended that the Congress be encouraged to establish a policy of federal responsibility for all of the capital costs associated with the development of such facilities just as the State of California has assumed this responsibility in connection with State Water Project facilities.

The federal government, by assuming total financial responsibility for the capital development costs of such facilities at their water projects, would make the operation, maintenance, and replacement responsibilities more attractive to nonfederal governmental agencies which are presently unable, from the standpoint of economics, to assume the large fiscal responsibility required. Such a policy change would make Public Law 89-72 more efficient and workable and would be a long step forward in achieving the stated purposes of the act.

2. The Department of Parks and Recreation be directed to initiate talks with affected federal and local governmental agencies to explore the possibility of standardizing the user fee structures at similar types of outdoor recreational facilities irrespective of the operating public agency.

Such a standardization of user fees would serve to reduce overcrowding at certain areas and underuse at others. Additionally, it would serve to place the operation of each such unit on a sounder economic basis.

3. The Department of Parks and Recreation be directed to review, revise, and update the user fee structure for units of the state park system, particularly for those units which require the construction of specialized facilities such as reservoir recreation areas. The goal of such a revision should be the attainment of an operating income more in line with operation and maintenance expenditures.

4. While it is recognized by the committee that it is impossible to control access to units of the state park system in all instances, it is the opinion of the committee that the Department of Parks and Recreation should make an effort to attain a higher degree of control over access to such units, particularly where costly specialized facilities have been developed.

It is a simple fact that it will be impossible to place the operation of reservoir recreation areas on a sound fiscal basis as long as toll-free points of access are available. Tollgates should be placed at all points of access to such areas where feasible or the access points closed off.

The Department of Parks and Recreation should explore the possibility of placing automatic tollgates or ticket boxes at those points of access or in those developed areas where, because of limited use, the placing of an attendant could not be justified.

5. The Department of Parks and Recreation and the Department of Fish and Game should explore with federal water development agencies the ways and means of bringing affected state *local* agencies into the planning process during the early stages of project formulation. Such early consultation will eliminate difficulties such as developed during the formulation of the Auburn Dam-Folsom South Project, will assist in attaining greater consideration of local needs and desires, and will serve to develop a greater local interest in and understanding of the project development.

In this regard it is noted here that the interagency task force which developed the Auburn-Folsom Recreation Plan did not contain a single representative from the affected local governmental agencies.

6. It is recommended that the Department of Fish and Game be designated as the nonfederal agency to review and coordinate with local government the fish and wildlife planning activities at federal water projects.

It is essential that close coordination between federal, state, and local agencies be maintained during the early stages of project planning if the true potential for fish and wildlife enhancement at these projects is to be realized.

The committee does not wish to imply that it is recommending that the Department of Fish and Game assume the fiscal responsibilities of the nonfederal participant at all such projects. As stated by the Department of Fish and Game, "Virtually all projects possess potential for enhancement of fish and wildlife resources. The problem will be one of selecting those enhancement features which would be of greatest benefit to the state in relation to potential costs." [4]

7. The committee in investigating the adequacy of planning for the development of recreation and fish and wildlife enhancement facilities by federal water development agencies has become somewhat concerned over the inadequacy of such planning.

It has become obvious that, in many instances, the present level of planning will be insufficient to properly realize the goals set forth in Public Law 89-72. Planning activity proceeds on an orderly and efficient basis when "basic data" is available. For the most part such data is available only when it has been previously collected by a state agency. This is particularly true in the area of fish and wildlife investigations.

In this regard the committee concurs with the Department of Fish and Game's appraisal of the federal government's planning activities. The department has stated, "A major expansion of the federal fish and wildlife planning program is necessary if the enhancement opportunities inherent in water development are to be realized. We see a special need for more federal effort in collecting the basic data necessary to evaluate project potentials and to plan specific fish and wildlife enhancement features." [5]

This is particularly true in regard to proposed water developments in California's north coastal watersheds. The committee feels that such planning is a proper responsibility of the agency proposing the particular project and recommends that the recreation and fish and wildlife

[4] Transcript of Proceedings, Senate Fact Finding Committee on Water Resources, Review of the Operation of the Federal Water Project Recreation Act, Public Law 89-72, September 21–22, 1966, p. 305.
[5] *Ibid.*, p. 307.

planning activities of such agencies be accelerated in accordance with such planning requirements.

In the absence of such an acceleration the goals of Public Law 89-72 cannot be effectively and efficiently attained. It is the opinion of the committee that the State of California should refrain from financial participation in the development of a federal water project's recreation and fish and wildlife enhancement potential unless the planning funds for the project are sufficient to assure the timely and adequate collection of necessary basic data and the development and inclusion of efficient, appropriate, and worthwhile recreation and fish and wildlife enhancement facilities.

8. As set forth in Recommendation No. 6, the Department of Fish and Game must be selective in choosing those fish and wildlife enhancement features in order to adopt only those project modifications which offer the best return to the people of California for the amount of funds invested. Such participation must be weighed in relation to other high priority funding requirements. In this regard, it is recommended that the department be directed to develop a cost-benefit ratio approach in order to provide a means of objectively evaluating such participation.

9. The Federal Water Project Recreation Act and the Porter-Cobey Act establish new major policy involving potentially large financial commitments. Therefore, it is recommended that the Legislature periodically review the provisions of these acts in order to make such changes as may be warranted by changed conditions and can he substantiated through the attainment of practical experience in their operation.

FEDERAL WATER PROJECT RECREATION ACT

The Congress, after years of struggling with the difficult problem of providing for recreational development at federal water projects, in 1965 enacted the Federal Water Project Recreation Act in order to provide a basic statute to uniformly govern the development of recreation facilities at all federal water resources development projects.

The stated policy of the Congress in enacting Public Law 89-72 was to provide ". . . that (a) in investigating and planning any federal navigation, flood control, reclamation, hydroelectric, or multipurpose water resource project, full consideration shall be given to the opportunities, if any, which the project affords for outdoor recreation and for fish and wildlife enhancement and that, wherever such project can reasonably serve either or both of these purposes consistently with the provisions of this act, it shall be constructed, operated, and maintained accordingly; (b) planning with respect to the development of the recreation potential of any such project shall be based on the coordination of the recreational use of the project area with the use of existing and planned federal, state, or local public recreation developments; and (c) project construction agencies shall encourage nonfederal public bodies to administer project land and water areas for recreation and fish and wildlife enhancement purposes and operate, maintain, and replace facilities provided for those purposes unless such areas or facilities are included or proposed for inclusion within a national recreation area, or are appropriate for administration by a federal agency as a part of the national forest system, as a

part of the public lands classified for retention in federal ownership, or in connection with an authorized federal program for the conservation and development of fish and wildlife." [6]

The Federal Water Project Recreation Act, while viewed with mixed emotions by some, must be considered as a piece of landmark conservation legislation. While the U.S. Army Corps of Engineers has for some time been authorized to construct basic public recreational facilities at their reservoir projects [7] and while consideration has been given to the fish and wildlife aspects of federal water projects pursuant to the Fish and Wildlife Coordination Act of 1958,[8] the Federal Water Project Recreation Act for the first time recognizes a real federal responsibility for the development of such facilities at their water projects.

Specifically, Public Law 89-72 provides that prior to the authorization of a federal water project by the Congress there must be a nonfederal statement of intent, in writing, expressing the interest of such agency in participating in the development of the project's recreation and fish and wildlife enhancement features. Such features cannot be considered by federal water development agencies during project formulation in the absence of a letter of intent.

The nonfederal agency must agree to administer project land and water areas for the purposes of recreation and fish and wildlife enhancement and must further agree to assume all costs of operation, maintenance, and replacement associated with such project features.

Additionally, the nonfederal agency must agree to assume not less than one-half of the separable capital costs allocable to the recreation and fish and wildlife enhancement functions. Such costs include the costs of lands and facilities developed for recreation and/or fish and wildlife enhancement and may include costs associated with special operation of the reservoir or other project modifications. It should be noted that such cost sharing requirements are not applicable where the project results in the enhancement of international resources such as anadramous fisherics or migratory waterfowl.

When a nonfederal agency agrees to assume the above-mentioned responsibilities, the federal government will then assume the remaining 50 percent of the separable project costs, together with all of the joint costs.

The nonfederal share of the separable costs allocated to these functions may be repaid through payments, by contributions of lands, interests in lands, or facilities, by repayment within 50 years of first use of such facilities, or by a combination of such repayment methods.

Public Law 89-72 further provides that the source of repayment may be limited to the entrance and user fees or charges collected at the project provided the user-fee structure is calculated so as to achieve repayment within the specified repayment period. In the absence of a nonfederal statement of intent to administer project land and water areas and to assume the above-mentioned obligations, the federal construction agency would be precluded from considering recreation and fish and wildlife as project purposes except for "minimum facilities."

[6] Section 1, PL 89-72.
[7] Section 4, Flood Control Act of 1944.
[8] Public Law 85-624.

Minimum facilities are defined in Public Law 89-72 as those which would be necessary for the public health and safety. Such minimum facilities must be located at access points provided by roads in existence at the time of project construction or necessary for project management purposes.

However, it should be noted that even though a letter of intent is not forthcoming prior to project authorization the federal constructing agency is permitted to acquire those lands necessary to provide for full recreational development of the project.

The federal agency is permitted to retain such lands for a period of 10 years pending a possible agreement with a nonfederal agency to develop the full recreation and fish and wildlife enhancement potential of the project. If such an agreement is not forthcoming within the specified period the federal agency may then either utilize the lands for other purposes or dispose of them.

Even though the nonfederal agency has this period of time in which to receive the benefit of federal participation in the development of a project's recreation and fish and wildlife enhancement potential, one of the principal benefits would be lost if the letter of intent is not issued prior to congressional authorization and a binding operational agreement is not entered into prior to project construction.

While the benefits to the recreation user could be obtained at any time during the 10-year period, the benefit to the water and power user, which would accrue as a result of the federal government assuming the joint project costs, would be lost. Such joint costs would have been allocated to other project purposes and would have become reimbursable by the nonrecreation project beneficiaries. Public Law 89-72 does not permit the reallocation of the joint costs to the nonreimbursable recreation function during the 10-year period subsequent to project completion.

CHAPTER 143, STATUTES OF 1966

Subsequent to the enactment of the Federal Water Project Recreation Act and the authorizing legislation for the Auburn Dam-Folsom South Canal Unit of the federal Central Valley Project,[9] which contained recreation and fish and wildlife cost-sharing provisions so nearly identical to Public Law 89-72 that they could be used interchangeably, it became evident that it would be necessary not only to provide for the statutory implementation of the federal acts at the state level but that it would also be necessary to provide statutory guidelines and legislative controls over participation by the State of California in accordance with the provisions of these acts.

The need for a standard, orderly procedure to review and evaluate proposed state participation was brought into sharp focus through requests of federal water development agencies for state cooperation and participation in the development of recreation and fish and wildlife enhancement facilities at the federal Auburn Dam-Folsom South Canal Unit and at Marysville Dam and Reservoir Project. This necessity was further emphasized by the imminence of similar requests for state participation at other federal water projects soon to be submitted to the Congress for authorization.

[9] Public Law 89-161.

Legislation declaring state policy and providing statutory guidelines introduced by Assemblyman Carley V. Porter and coauthored by Senator James A. Cobey, Chairmen of the Assembly and Senate Water Committees, was passed at the 1966 legislative session. However, state participation in the development of recreation and fish and wildlife enhancement facilities at the Auburn Dam-Folsom South Canal Unit pursuant to Public Law 89-161 was specifically excluded from the provisions of the act.

Participation by the State of California in the development of such facilities at this project was specifically authorized by Senate Bill 26 [10] of the 1966 session. Subsequent to the enactment of this legislation, detailed recreation plans were developed by the Auburn-Folsom Interagency Task Force and, on December 30, 1966, an operating agreement between the United States Bureau of Reclamation and the State of California was signed.

This agreement provides for state administration of project land and water areas and for repayment to the United States of 50 percent of the capital costs of the recreation facilities in accordance with the provisions of the authorizing legislation. The representatives of the State of California in negotiating the operating agreement with officials of the Bureau of Reclamation were anxious to obtain a credit for the state's investment of over $5,000,000 in recreation facilities at the bureau-operated Folsom Dam and Reservoir which had been made an integral part of the new project. It is to the credit of the state's negotiators that this was accomplished and provided for in the agreement as finally drafted.

The enactment of Assembly Bill 118 of the 1966 legislative session established new state policy and placed upon the State of California potential new responsibilities for the funding of recreation development. In enacting Assembly Bill 118, the Legislature stated, "It is hereby declared to be in the public interest for the state and local public agencies to participate with the federal government with respect to recreation and fish and wildlife enhancement facilities at federal water projects to the extent that such facilities are deemed necessary and desirable by the state or local public agency participating. . . ." [11]

However, such participation by the State of California is permitted only to the extent that the proposed facilities are of "statewide importance" and is further limited to those instances where there is no local public agency willing and able to assume the nonfederal responsibility.

Dissatisfaction in the Legislature over the administrative handling of the State Beach, Park, Recreational, and Historical Facilities Bond Act of 1964 fostered the inclusion in Assembly Bill 118 of extensive legislative control over proposed state participation pursuant to Public Law 89-72.

The initial step towards ultimate state participation in accordance with the provisions of this act is the issuance, in writing, of a letter of intent indicating that the state intends to enter into a formal agreement to administer project land and water areas for the purposes of recreation and fish and wildlife enhancement and that the state will

[10] Chapter 66, Statutes of 1966.
[11] Section 5094, Public Resources Code.

assume the financial obligations required by the act. This action may be taken by the Administrator of the Resources Agency only with the approval of the Director of Finance and *only upon specific authorization by the Legislature.*

The Administrator of Resources is required to submit the proposed indication of intent to the Legislature together with supporting data which must include a statement that to the extent the state proposes to participate such participation is of statewide importance, that it is in compliance with all comprehensive water, recreation, and fish and wildlife enhancement plans of the state, and that there is no local agency willing and able to assume such obligations.

Subsequent to the issuance of a letter of intent regarding a particular project, the Resources Agency, acting through the Department of Parks and Recreation and the Department of Fish and Game, is required to conduct an investigation of the project and prepare detailed plans of the proposed state participation.

When completed, such plans must be submitted by the agency administrator to the Governor and to the Legislature together with a statement of the agency's findings as specified above. When the requirements regarding the issuance of the letter of intent and completion of the detailed plans for the proposed state participation are complied with, the Department of Parks and Recreation and the Department of Fish and Game, *upon specific authorization by the Legislature,* may negotiate and execute an operating agreement with the appropriate federal agency.

It should be noted here that Assembly Bill 118 in setting forth state policy and establishing guidelines concerning state participation pursuant to the federal statute also authorized the Administrator of the Resources Agency to issue a letter to the United States Army Corps of Engineers indicating the state's intent to participate in the recreation and fish and wildlife development at the authorized Marysville Dam and Reservoir Project. It is further noted that only the letter of intent was authorized and that ultimate state participation will be dependent upon completion of the required studies and findings in addition to further legislative authorization.

RECREATION AND FISH AND WILDLIFE PLANNING AT FEDERAL WATER PROJECTS

Public Law 89-72, with its requirement of nonfederal participation in the development and administration of recreation and fish and wildlife enhancement facilities, has created many new problems for nonfederal public agencies in addition to the obvious problem of the potential financial burdens. One such problem area, which relates not only directly to the economics of the proposed development but to the maximization of benefits to the public through the inclusion of appropriate project modifications, is project recreation planning.

In order to develop a more complete knowledge of planning procedures and an understanding of the importance of this planning activity to nonfederal public agencies, a brief discussion of the planning and budgetary procedures utilized by the principal federal water development agencies (the U.S. Bureau of Reclamation and the U.S. Army Corps of Engineers) is presented here.

Bureau of Reclamation

The United States Bureau of Reclamation in the planning of multipurpose water development projects relies primarily upon the services of other federal agencies in conducting the necessary studies and evaluations of each project's recreation and fish and wildlife enhancement potential. Recreation studies are conducted by the Federal Bureau of Outdoor Recreation and the fish and wildlife enhancement investigations by the United States Bureau of Sports Fisheries and Wildlife.

The Bureau of Outdoor Recreation investigatory activities center primarily upon the evaluation of the project's recreation potential at the reconnaissance and feasibility levels. Such evaluations conducted of the project impact areas include analyses of the following: 1. The supply of and demand for recreation facilities; 2. Population statistics and growth trends; 3. Site access; 4. Field surveys; 5. Vegetative cover; 6. Topography; 7. Reservoir operation; 8. Aesthetics; 9. The economics of the area; and, 10. Existing and proposed recreation development. From the collection and analysis of this data it is possible to determine the type, number, and cost of the necessary recreation facilities.

According to the Bureau of Reclamation, "These evaluations are carried on concurrently with all other phases of the investigation and are completed in sufficient time to allow inclusion of the study results in Reclamation's report to the Secretary of the Interior." [12]

U.S. Army Corps of Engineers

The planning procedures utilized by the Corps of Engineers in evaluating the recreation and fish and wildlife enhancement potential of their water projects are essentially the same as those utilized by the Bureau of Reclamation.

However, the Corps of Engineers is more extensively staffed with recreation resource specialists including planners, fish and wildlife biologists, landscape architects, foresters, etc., and relies to a lesser degree upon the services of other federal agencies.

While coordination and review of corps' planning activities is conducted by other federal agencies, including the Bureau of Outdoor Recreation and the National Park Service, and while such agencies cooperate in corps' planning activities, the principal task of investigating and evaluating a project's recreation and fish and wildlife enhancement potential remains the responsibility of the staff of the Corps of Engineers. The extent to which such facilities are to be included at a corps' project is determined by the corps in cooperation with these other federal agencies and with state agencies having responsibilities affected by the corps' project.

The budgeting and funding of the coordination and review functions of the Bureau of Outdoor Recreation and the National Park Service is conducted through those agencies. However, funding of the basic data collection program of the U.S. Fish and Wildlife Service is included as an item in the budget of the Corps of Engineers to be transferred to the Fish and Wildlife Service.

[12] Transcript of Proceedings, Senate Fact Finding Committee on Water Resources, *op. cit.*, p. 17.

In addition to funds transferred to the Fish and Wildlife Service as an operation of the normal budgetary process, corps' district engineers are permitted to transfer additional moneys in order to assure the completion of adequate fish and wildlife investigations in connection with a particular project or to resolve fish and wildlife problems peculiar to an individual project. In regard to such fish and wildlife investigations, "It is the policy of the corps to budget for and make available such funds as are needed for this purpose from project funds." [13]

Nonfederal Interest

Inasmuch as participation with the federal government in accordance with the provisions of Public Law 89-72 presents the possibility of the State of California and local public agencies within the state assuming new and added responsibilites for the development of public outdoor recreational and fish and wildlife facilities and inasmuch as the assuming of such responsibilities would undoubtedly involve a potentially large financial commitment on the part of such agencies, the State of California and local government must, of necessity, concern themselves with the adequacy of the recreation and fish and wildlife investigations and planning being conducted by federal water development agencies.

If the State of California or local public agencies within the state are to assume fiscal and managerial responsibilities for recreation and fish and wildlife enhancement facilities at federal water projects there must be reasonable assurances that the complex planning activity vital to the development of a meaningful and efficient plan, which incorporates those features and project modification of greatest benefit to the public, will be properly timed and funded.

In general, the basic data necessary for the evaluation of a project's recreation and/or fish and wildlife enhancement potential is usually available from a state agency. This is particularly true in regard to the data necessary to evaluate recreation potential which has been collected and kept up-to-date by numerous state and federal agencies. This is also true, but to a somewhat lesser degree, regarding basic fish and wildlife data.

The development of basic data regarding the fish and wildlife resources affected by a particular project may well require several years to collect and evaluate. This data, upon which project mitigation and enhancement plans are based, include reliable estimates of resource number, area requirements, migratory habits, and biological potentials. Additionally, the development of an enhancement plan involves the collection and analysis of data relative to existing and potential demands for resource use.

The committee has become somewhat concerned over the timing and budgeting of those studies necessary for the development of project mitigation and enhancement plans not only because of the necessity to protect the possible investment of state funds in such project features but more so because of the state's paramount custodial responsibility for assuring the protection of the state's fish and wildlife resources in the development of such projects.

[13] *Ibid.*, p. 84.

In evaluating the time and budgetary allowances provided to them, the U.S. Fish and Wildlife Service has stated, "*When basic prerequisite data are available,* time and budgetary allowances are generally adequate to fulfill our investigative and planning responsibilities. In the absence of basic information, time and funding schedules are not significantly affected when short-term or noncomplex studies are involved. Difficulties encountered in the past have usually been involved with large-scale projects when it has been necessary for our service to engage in activities which were unscheduled or beyond the normal scope and divert time and funds for investigations concerned with prerequisite data. The highly complex nature of many pending projects will increase time and funding difficulties unless basic data needs are resolved." [14] (Emphasis added.)

It is the opinion of the California Department of Fish and Game that the time and budgetary allowances provided federal agencies to conduct studies of fish and wildlife enhancement potential are not sufficient to permit adequate investigation and planning. It is also their opinion that such investigations "are not timed or funded in a manner commensurate with the size and number of federal water projects in California" and that "The funds made available to the Office of River Basin Studies are simply too small in relation to the projects at hand." [15]

One of the areas of greatest concern to the Department of Fish and Game and to this committee is the timing and funding of the requisite fish and wildlife studies of California's north coastal areas, which must be completed prior to extensive water development. In this regard the Department of Fish and Game has presented a detailed analysis of the studies which will be required before extensive water resource development is undertaken in this area.[16]

In specific regard to such study requirements and the timing and funding of such studies, the department has stated, "At the present time the funding of fish and wildlife studies are not in tune with the timing and funding of the engineering studies on north coast water projects. Federal engineering studies on these projects are progressing rapidly and seem to bear little relationship to needed fish and wildlife studies.

"The allocations to the Office of River Basin Studies in California for studying north coast water projects have been negligible in relation to the large sums of money being spent for advanced engineering studies. The allocations are made without reference to specific project needs and are tragically small in relation to the problems and resources values involved in the water projects being planned." [17]

This committee and, indeed, the Department of Fish and Game, as evidenced by their testimony, does not mean to imply any criticism of the efforts of the federal agencies in this regard. However, we do wish to emphasize that vital studies necessary not only for the protection of California's fish and wildlife resources but for the development

[14] *Ibid.*, pp. 116–117.
[15] *Ibid.*, p. 297.
[16] Fish and Wildlife Study Requirements in Relation to North Coast Water Development, Department of Fish and Game, Water Projects Branch Report No. 5, January 1966.
[17] Transcript of Proceedings, Senate Fact Finding Committee on Water Resources, *op. cit.*, pp. 299–300.

of meaningful enhancement measures, particularly in the north coastal watersheds, are sorely lacking because of inadequate funding.

The United States Fish and Wildlife Service agrees that the proposed studies as outlined in the report of the California Department of Fish and Game ". . . are desirable in connection with north coast developments." [18] In regard to the proposed scheduling of such studies they ". . . also agree that the proposed dates are realistic and generally allow sufficient time for the completion of the studies." [19]

The north coastal area of California is possessed of extensive and valuable fish and wildlife resources which contribute materially to the state's economy both through commercial and recreational use. Department of Fish and Game estimates indicate that this area produces in excess of 50 percent of the state's salmon and nearly 50 percent of the state's steelhead fishery resource. Additionally, there are greater numbers of deer in this area (a third of the state's total population) than in any other area of the state.

The extensive water development currently being planned for the north coast will obviously have a serious impact upon the fish and wildlife resources of the region. Virtually the entire anadromous fishery resource of the region will be affected by the water projects currently being planned. Vital deer habitat, including critical winter range, will be flooded and lost by proposed reservoir development.

It is the feeling of the committee that a duty of care is owed the resources and the people of California by those agencies which propose such projects. These resources can only be protected and enhanced through full consideration in project development. Such consideration is essential beginning with the earliest stages of project planning.

It has been estimated that the studies proposed in the California Department of Fish and Game report will cost nearly 12 million dollars over a 12-year period. It is the committee's opinion that such studies, including the collection of basic fish and wildlife data, are properly the responsibility of those agencies which propose to construct the individual projects and that the necessary studies should be properly timed and sufficiently funded by such agencies.

LETTERS OF INTENT—OPERATING AGREEMENT

During consideration of Assembly Bill 118 at the 1966 session of the Legislature, there was considerable confusion as to the precise meaning, purpose, and legal effect of the letter of intent required by Public Law 89-72. There were many different interpretations of the federal statute not only by state agencies and interested private individuals but by the federal agencies responsible for implementing the act as well. This situation served to create considerable concern that the absence of strict legislative control over all aspects of state participation might result in the Legislature being administratively committed to large and indeterminable appropriations for recreation and fish and wildlife enhancement facilities at future federal water projects.

Recognizing that the letter of intent was an integral part of the process to authorize the development of recreation and fish and wildlife

[18] *Ibid.*, p. 119.
[19] *Ibid.*, p. 119.

enhancement facilities at federal water projects, various Members of the Legislature expressed considerable concern over the extent of the commitment being assumed by a nonfederal agency through the simple act of issuing a letter of intent. Additional areas of legislative concern centered upon the extent to which data concerning a project's recreation and fish and wildlife enhancement potential and the degree to which cost estimates relative to such project features would be refined and available to the nonfederal agency at the time the letter of intent and the binding operating agreement was requested.

While firm administrative policies, rules, and regulations to govern the implementation of the Federal Water Project Recreation Act have not been fully developed, it has been determined that all recreation and fish and wildlife enhancement facility costs must be covered by a letter of intent before the project is authorized and a binding cost-sharing agreement between the federal government and a nonfederal public agency executed prior to the commencement of project construction. The failure to obtain such a letter or agreement with a nonfederal agency would preclude the consideration of recreation and fish and wildlife enhancement facilities in project development. Additionally, the benefits which would accrue to water users and other project beneficiaries as a result of federal assumption of the joint costs of the projects would be lost.

The timing of requests for the letter of intent and/or operating agreement by the federal agency is of considerable importance to the nonfederal entity inasmuch as the ability of that agency to assess the value of the proposed project's recreation and fish and wildlife potential will be dependent upon the extent to which data concerning such project modifications are refined at the time of the request.

As a general rule the nonfederal agency will be requested to issue a letter of intent to participate in the development of a project's recreation and fish and wildlife enhancement potential immediately following the completion of reports concerning those project functions by the appropriate federal agency.

According to the Bureau of Reclamation sufficient information regarding the proposed development would be available at the time the letter of intent was requested to permit the nonfederal agency to make the necessary preliminary determinations. Specifically, the bureau has stated that at the time the letter of intent is requested, ". . . we have ready for distribution to all interested parties a brief description of the reservoir, its operational pattern and the type of use expected. Estimates of land costs, itemized facility costs, annual operation, maintenance and replacement costs, anticipated recreation use and an appraisal of annual monetary benefits would also be made available. The financial obligation of the nonfederal agency under the provisions of Public Law 89-72, on the basis of estimated costs, would be indicated." [20]

It should be noted, however, that while the reports concerning the recreation and fish and wildlife aspects of the proposed development would be available to the nonfederal agency such reports would not include detailed site development plans.

[20] *Ibid.*, p. 15.

Public Law 89-72, as adopted, provided nonfederal agencies with ample time in which to review a proposed project in that the letter of intent could be issued at any time prior to the authorization of the project by Congress. This provision has been interpreted by both the United States Bureau of Reclamation and the U.S. Army Corps of Engineers as meaning that the letter of intent must accompany the project report at the time it is transmitted to the Congress for authorization. In general, sufficient time for review by nonfederal agencies was allotted by this procedure. However, through administrative regulation, the Bureau of the Budget has required that the letter of intent accompany the project report at the time it is submitted for review by that agency. Ostensibly, this change was made to provide the Bureau of the Budget the advantage of having the letter of intent in its possession while the project report is under its review. The "advantages" of the Bureau of the Budget having the letter at this time is presently unclear. The effect this administrative change will have upon the ability of nonfederal agencies to properly review and effectively evaluate their proposed participation is uncertain. It should be recognized, however, that there is often a considerable period of time between the submission of a project report to the Bureau of the Budget for review and its transmittal to the Congress for authorization. It is hoped that this change in procedure will not materially reduce the time allotted for review by such agencies, thereby impairing their ability to cooperate in proposed developments.

The negotiation of a binding agreement between the federal government and the nonfederal public entity would not commence before the project is authorized by Congress. However, this agreement must be completely developed and executed prior to the beginning of project construction.

At the time the federal government requests a binding contract no additional data concerning the recreation and fish and wildlife enhancement features of the project would have been developed by the federal agency. However, during negotiations on the proposed contract a specific development plan would be prepared in cooperation with the nonfederal entity and would contain detailed site plans and firm cost estimates.

As previously mentioned, there has been considerable confusion as to the meaning of the letter of intent and its precise legal effect. The committee in attempting to clarify the legal status of the letter of intent requested an interpretation by the Legislative Counsel as to "what legal effect, if any, attaches when a state or local agency issues a letter of intent to participate in recreation and fish and wildlife enhancement facilities at federal water projects?"

It is the counsel's opinion that such a letter "serves only the limited purpose of permitting provision to be made for recreation and fish and wildlife enhancement at a federal water project" and that "the only legal effect that a letter of intent has is to meet the condition precedent to the federal government specifically authorizing inclusion of recreation and fish and wildlife enhancement facilities at the pertinent federal water project." (For text of the Legislative Counsel's opinion, see appendix.)

The Bureau of Reclamation and the Corps of Engineers agree with this interpretation of the act. The bureau has stated, "The letter of intent in itself is not legally binding on the agency which issues it. It constitutes a declaration of intent, given in good faith, to enter into a contract which would be legally binding upon reaching agreement on details which the contract embodies."

The Corps of Engineers, likewise, has stated that, "The furnishing of a 'letter of intent' by a nonfederal agency expressing an intention to enter into an agreement is not considered by the corps to legally bind such agency to actually enter into such agreement or undertake such administration. Rather, it is considered to constitute a responsible expression endorsing the project and indicating intent to make every practicable effort to fulfill the nonfederal requirements." [21]

The Corps of Engineers has had considerable experience with "indications of intent" inasmuch as similar assurances are required for projects constructed pursuant to the Flood Control Act of 1936. In such projects there must be assurances that a nonfederal agency will furnish all lands, easements, rights-of-way, and relocations for the proposed project and will operate and maintain the completed project works.

The corps has not considered these "assurances" to have any legal effect and feel that the letter of intent required in Public Law 89-72 would be considered in a similar manner. The formal agreement entered into subsequent to the issuance of the letter of intent and project authorization but prior to the commencement of construction is the document considered to be legally binding upon the parties.

While the matters discussed above concerning the letters of intent and the final operating agreement are of considerable importance to those public agencies which may be called upon to provide nonfederal assistance, of importance to the State of California are the procedures established in state law to govern such proposed participation by the State of California.

Section 5094.1 of the Public Resources Code requires that the Administrator of the Resources Agency secure legislative approval before issuing any indication of the state's intent to participate in the development of recreation and fish and wildlife enhancement facilities at a federal water project.

Several witnesses appearing before the committee expressed considerable concern over the requirement of legislative approval of the letter of intent in that the process was cumbersome and unnecessary. The Administrator of the Resources Agency considered the requirements placed upon him to be "premature and unworkable."

The committee wishes to acknowledge that these witnesses have advanced a strong case for changing this requirement. *However, in evaluating this case it must be kept in mind that the Legislature has determined that it desires to retain complete legislative control over participation by the State of California in accordance with the provisions of the federal act. This is a consideration of paramount importance.*

Nevertheless, the requirement of legislative authorization of the letter of intent has posed several possible problems which merit discussion. The Porter-Cobey Act requires the Administrator of Resoures to make

[21] *Ibid.*, p. 81.

several determinations concerning a proposed federal water project before he requests legislative authorization to issue the letter of intent. First, he must determine that the proposed project is in compliance with all comprehensive water, recreation, and fish and wildlife plans of the state. Secondly, he must determine that to the extent the state proposes to participate there is no local public agency willing and able to do so. Thirdly, he must determine that the state's participation is of "statewide importance."

Obviously, it is clear that a great deal of work will be required in order to make these determinations and that such determinations will be dependent upon the collection and analysis of project recreation and fish and wildlife data. While it is presently unclear as to precisely at what point in project planning the necessary data would be available, it was the opinion of the Resources Agency Administrator that the majority of the planning information which is required by the Porter-Cobey Act prior to requesting authorization of the letter of intent "would not, in fact, be available until the federal planning was well along."[22]

It was his position that the issuance of a letter of intent was simply an indication of interest in the project and was not a financial commitment nor a commitment to assume any obligation regarding the project. Therefore, the letter of intent should, with this understanding, be issued at the earliest possible time in order to facilitate the planning process. If this were actually the case and such was specifically so stated in federal law there would be no hesitancy on the part of this committee to alter the provisions of the state implementing legislation.

However, while it is recognized that the issuance of a letter of intent does not in and of itself create any obligations on the part of the issuing agency, it is the opinion of the committee that the issuance of such a letter, at a very minimum, creates a moral obligation upon the part of the issuing agency to negotiate in good faith and to enter into a binding agreement.

While changing the state statute may well simplify the authorizing procedure and facilitate the planning process, such cannot be utilized as an excuse to justify the promiscuous issuance of letters of intent. Should this be permitted, the very purpose of the entire process would have been emasculated.

There, however, is another factor which is of considerable concern to the members of the committee. Federal agencies have recognized that the establishment of procedures to govern proposed state participation are within the province of the Legislature. However, such agencies are concerned that such methods and procedures, particularly as they relate to the letter of intent, may be designed so as to cause undue delay in the authorization of state cooperation.

In this regard they are particularly concerned that delays at the state level can cause significant delays in gaining the authorization of proposed projects by the Congress. According to the Corps of Engineers a delay of a few months in the submittal of feasibility reports to the Congress can, because of the procedural mechanics in obtaining authorization of federal projects, result in delays of from one to three years in getting projects for flood control and other purposes author-

[22] *Ibid.*, p. 248.

ized. While this committee cannot in good conscience recommend repeal of the requirement of legislative authorization of the letter of intent, it is our feeling that the findings required in Chapter 143 as a condition precedent the requesting of legislative authorization should be modified to reflect the availability of project data at the time such a letter is required.

The committee recognizes the need for water resource development and the importance of flood control projects and, further, is congnizant of the problems encountered in obtaining congressional authorization. If the possible practical problems heretofore set forth materialize, it is the opinion of the committee that the state statute should be amended to eliminate the requirement of legislative authorization of the letter of intent or, at least, amended to permit the issuance of a conditional letter of intent. It is noted here that a letter of intent, as evidenced by one written by the former Governor of the State of Arizona for the Colorado River Basin Project (see Appendix), may be issued on a very qualified and conditional basis but still be accepted by federal officials as complying with the requirements of Public Law 89-72.

It was also the feeling of many individuals that it would be difficult to obtain legislative authorization because of the fact that the Legislature only met in general session during odd-numbered years. However, the passage of Proposition 1a at the 1966 general election, which provides for annual general legislative sessions, should eliminate or, at least, greatly reduce any problems in this regard.

Federal agencies, undoubtedly, will be well aware of any state statutory requirements which must be met as a condition of nonfederal participation. Being cognizant of such requirements, federal agencies will most likely adjust their project planning activities to permit adequate consideration of the proposed project at the state and local level in order to assure the submission of the necessary documents in accordance with their scheduling requirements.

STATE AND LOCAL RESPONSIBILITY FOR RECREATION DEVELOPMENT

In order to determine the appropriateness of state or local participation under the provisions of the Federal Water Project Recreation Act, it is necessary to evaluate the roles and responsibilities of such agencies as suppliers of public outdoor recreation facilities. In doing so, one must consider the principal thrust of Public Law 89-72 and the possible effect it could have upon the ability of state and local agencies to carry out established recreation programs.

The State of California through the establishment of various policies and programs has become the principal financier, developer, and supplier of recreation facilities within the state. One needs only to look at California's extensive state park system, its small crafts harbors and facilities program, its various fish and wildlife programs, and its programs for developing water-associated recreation facilities at both state and local water projects, in order to obtain some idea of the magnitude of the state's commitment to recreation development.

Even though the State of California has acquired well in excess of 700,000 acres of land for its state park system, it is recognized that

additional acquisitions must be made in order to "round out" that system and to meet the growing public demand for recreation lands. Aside from any future financial requirements in this regard, it has been estimated that nearly five hundred million dollars will be required to provide necessary development of those lands presently within the state park system and those lands acquired under the State Beach, Park, Recreational and Historical Facilities Bond Act of 1964.

Other state recreation programs include those of the Department of Fish and Game, Department of Harbors and Watercraft, and the Wildlife Conservation Board in addition to the more limited programs of other state agencies. It has been estimated that the fishery management costs of State Water Project facilities will be between one and two million dollars annually. It is generally acknowledged that the Fish and Game Preservation Fund will be insufficient to meet these costs and that it will be necessary to finance such costs from the state's General Fund.

One state program established by the Davis-Dolwig Act [23] merits particular consideration in discussing the development of water-associated recreation facilities because of its similarity to the Federal Water Project Recreation Act. Just as Public Law 89-72 establishes federal policy concerning the planning, development, and funding of recreation and fish and wildlife enhancement facilities at federal water projects, the Davis-Dolwig Act establishes such policy in connection with State Water Project facilities.

Specifically, this act provides for the inclusion of recreation and fish and wildlife enhancement facilities at State Water Project developments, requires that the planning for such project features will be conducted concurrently with the formulation of the total project, and authorizes their funding as nonreimbursable project costs. However, unlike the federal policy established in Public Law 89-72, the State of California, in the Davis-Dolwig Act, has assumed almost total financial responsibility for the development of recreation and fish and wildlife enhancement facilities at its State Water Project and has not required that a portion of that responsibility be shifted to other public agencies.

Such nonreimbursable project costs will be financed through the annual diversion of five million dollars in revenue from state-owned tidelands oil as provided in Assembly Bill 12 of the 1966 First Extraordinary Session of the Legislature.

It is noteworthy that the State of California has not only assumed this responsibility in connection with its water facilities but has attempted to assist local public agencies in the development of recreation and fish and wildlife enhancement facilities as well. In addition to the forty million dollars for recreation development made available to local public agencies through the grant provisions of the recreation bond act, the State of California has provided financial assistance to such agencies for water resource development, including recreation and fish and wildlife enhancement facilities, under the provisions of the Davis-Grunsky Act.[24] The Davis-Grunsky Act has made $130,000,000 available to local public agencies in the form of loans for reservoir

[23] Section 11900, et seq., Water Code.
[24] Section 12880, et seq., Water Code.

construction and grants for the recreation and fish and wildlife enhancement features of dams and reservoirs.

Loans repayable over a period not to exceed 50 years are available for projects constructed primarily for domestic, municipal, agricultural, recreation, or fish and wildlife enhancement purposes and grants may be made to cover those project costs allocated to recreation or fish and wildlife enhancement. The grant for each such purpose may not exceed 50 percent of the cost of the project. However, when both recreation and fish and wildlife enhancement are included as project purposes the maximum grant for such features may be increased to 75 percent of the total cost of the project.

In view of the state's financial obligations to such programs, one of the principal considerations in reviewing possible state participation under Public Law 89-72 is the huge cost of such cooperation. The office of the Legislative Analyst has consistently pointed out that the State of California "was developing or had established policies which would require it to finance nearly all of the recreation and fish and wildlife enhancement costs at local and state water projects," and noted further that the end result of state participation under Public Law 89-72 "Could be a major financial burden upon the state to meet these costs as well as to continue financing other needs such as the development of the greatly expanded state park system." [25]

The separable capital recreation and fish and wildlife enhancement costs of U.S. Bureau of Reclamation and U.S. Army Corps of Engineers projects presently authorized or proposed for construction in California, which are subject to the provisions of Public Law 89-72, are estimated at $147,798,000. The nonfederal share of such costs would be $78,899,000 plus estimated annual operation, maintenance, and replacement costs of $6,805,000.

Obviously, the extent of such a commitment would have an impact upon the state's ability to finance established and ongoing state programs. Because of the state's practical financial limitations it will be necessary, in determining the appropriateness of proposed state participation under Public Law 89-72, to consider such participation in relation to the needs of established state programs and the state's financial commitments to them. We cannot afford to invest state funds in federal water projects simply because the project is there. This is particularly true where funds are limited and there is a higher need for investment of available state funds elsewhere.

While the Federal Water Project Recreation Act has enunciated a long overdue federal policy in connection with the development of recreation and fish and wildlife enhancement facilities at federal water projects, the committee tends to agree with the Resources Agency Administrator's analysis of the act in that it appears ". . . the main concern of Public Law 89-72 . . . is one of laying a substantial share of that responsibility off on nonfederal agencies." [26]

Even though this is the case, state cooperation and participation may well be appropriate in many instances. However, such participation should be limited to those projects where water-associated recreation

[25] Transcript of Proceedings, Senate Fact Finding Committee on Water Resources, *op. cit.*, p. 268.
[26] *Ibid.*, p. 259.

facilities are necessary to fulfill a statewide need in a particular area. The committee agrees that state participation is warranted when "it is a timely and appropriate element of California's long-range plan for investment in public recreation resources." When such is the case the state would, indeed, get a bargain in that it is able to develop needed facilities at 50 percent of the cost.

In evaluating proposed state participation it must be remembered, as the office of the Legislative Analyst has pointed out, that "an important feature of Public Law 89-72 is the fact that it does not exclude a limited recreation development outside of the cost-sharing of Public Law 89-72 . . . It should be emphasized, therefore, that state or local cost-sharing in a federal project is not automatically necessary to

TABLE 1

ESTIMATED SEPARABLE CAPITAL AND ANNUAL OPERATION, MAINTENANCE, AND REPLACEMENT COSTS OF AUTHORIZED OR PROPOSED U.S. BUREAU OF RECLAMATION PROJECTS IN CALIFORNIA SUBJECT TO PUBLIC LAW 89-72

Feature	Separable costs (Thousands of dollars)			O, M & R	
	Initial	Incremental	Ultimate	Initial	Ultimate
Cosumnes River Division					
Nashville	7,587	10,300	17,893	283	813
Irish Hill	2,502	2,022	4,524	97	178
Aukum	2,597	2,920	5,517	97	238
Pi-Pi	991	737	1,728	33	63
Sopiago	926	1,260	2,186	35	81
Capps Crossing	768	916	1,684	28	63
Kellogg Unit					
Kellogg	7,034	2,420	9,454	373	506
Herdlyn	300	155	455	26	35
Contra Loma	1,227	285	1,512	42	57
Peripheral Canal Unit	6,610	4,864	11,474	392	820
Pit River Division					
(Allen Camp Unit)	578	1,600	2,178	31	136
West Sacramento Valley					
Canal Unit					
Oat	502	660	1,162	38	115
Cannon	645	1,815	2,460	42	211
Sites	1,791	2,035	3,826	106	300
Funks	600	--	600	44	44
Washoe Project					
Stampede	1,000	3,100	4,100	62	281
Watasheamu	60	170	230	7	24
East Side Division					
Knights Ferry	611	472	1,133	13	33
Montgomery	1,676	1,206	2,882	67	148
Figarden	7,987	1,406	9,393	118	236
Little Dry Creek	1,350	1,024	2,374	53	133
Hungry Hollow	3,088	2,000	5,088	159	308
Total	50,430	41,367	91,853	2,146	4,823

Source: U.S. Bureau of Reclamation.

TABLE 2

ESTIMATED SEPARABLE CAPITAL AND ANNUAL OPERATION, MAINTENANCE, AND REPLACEMENT COSTS OF AUTHORIZED OR PROPOSED U.S. ARMY CORPS OF ENGINEERS PROJECTS IN CALIFORNIA SUBJECT TO PUBLIC LAW 89-72

Project	Separable costs for		Annual O, M & R costs for recreation and fish and wildlife facilities
	Recreation	Fish and wildlife enhancement	
Lakeport Reservoir, Lake County	$620,000	--	$23,000
San Francisco Bay to Stockton Channel (navigation)	1,360,000	--	124,000
Marysville Reservoir, Yuba River	2,080,000	--	100,000
Isabella Reservoir, Kern River (modification)	4,550,000	2,640,000	70,000
*Poso Creek Reservoir, Kern County	(2,510,000 combined)		150,000
*Merced County Reservoirs	(9,285,000 combined)		237,000
Knights Valley Reservoir, Russian River	(11,700,000 combined)		137,000
Big Sulphur Creek Reservoir, Russian River Basin	(2,300,000 combined)		46,000
*Worley Flat Reservoir	(4,800,000 combined)		115,000
*Etsel-Franciscan Reservoir, Eel River	(4,200,000 combined)		300,000
*Dos Rios Reservoir, Eel River	(2,500,000 combined)		90,000
*Sequoia Reservoir, Eel River	(4,600,000 combined)		450,000
*Butler Valley Reservoir, Mad River	(2,800,000 combined)		140,000
Cottonwood Creek Reservoirs, Shasta and Tehama Counties	(No data yet available)		
Totals	$55,945,000		$1,982,000

* Preliminary data.
Source: U.S. Army Corps of Engineers.

secure the type of recreation development which may be entirely adequate to meet the recreation demands in certain areas." [27]

It should also be noted that Public Law 89-72 does not preclude the "scaling down" of the proposed recreation development at a federal project. In many instances, it may well be entirely possible to develop a smaller and less ambitious recreation plan which would be entirely adequate to fulfill the recreation need and yet would be within the economic ability of a local public agency. This possibility should be given every consideration at those projects where state participation cannot be justified on the basis of statewide need.

In most instances, participation by local public agencies under Public Law 89-72 would be a financial impossibility. Experience has proven that the development and operation of recreation facilities at large reservoir projects is tremendously unattractive from an economic standpoint. Local public agencies for the most part have not engaged in the type of recreation development contemplated at large reservoir projects. Such agencies have principally been responsible for supplying "neighborhood" recreation facilities and have, even in this undertaking, been limited by the availability of funding.

In general, revenues from reservoir recreation area operations do not even come close to paying the operation and maintenance costs, much less provide the developer a return upon the capital development costs. As can be seen in Table 3, revenues received from user fees and

[27] *Ibid.*, p. 271.

TABLE 3
DEPARTMENT OF PARKS AND RECREATION
Division of Beaches and Parks
RESERVOIR OPERATIONS FOR PERIOD 1965–66

	Operating expense	Revenue			Percent of operating expense
		Service fees	Concession fees	Total fees	
Benbow Lake State Recreation Area					
Salaries and wages	$14,600				
Operating expenses	2,407				
Total	17,007	$2,970	$50	$3,020	17.8
Folsom Lake State Recreation Area					
Salaries and wages	327,184				
Operating expenses	61,886				
Equipment	9,895				
Total	398,965	146,547	7,165	153,712	38.5
Lake Elsinore State Recreation Area					
Salaries and wages	84,808				
Operating expenses	*238,603				
Total	323,411	†106,076	†5,109	†111,185	34.4
Millerton Lake State Recreation Area					
Salaries and wages	133,787				
Operating expenses	30,596				
Equipment	8,703				
Total	173,086	70,377	3,551	73,928	42.7
Turlock Lake State Recreation Area					
Salaries and wages	38,332				
Operating expenses	6,595				
Equipment	3,320				
Total	48,247	26,442	931	27,373	56.7
TOTALS	$960,716	$352,412	$16,806	$369,218	38.4

* Includes $36,000 for purchase of water from Special Deposit Fund.
† Revenue deposited in Special Deposit Fund.

TABLE 4
ANALYSIS OF NONFEDERAL COST SHARING *
Auburn-Folsom South Unit

Proposed recreation costs (new lands and facilities)		[a]$16,746,600
Existing recreation development		[b]5,223,602
Total		$21,970,202
Nonfederal share		$10,985,101
Present state investment	[b]$5,223,602	
Balance to be repaid from revenues	5,761,499	
Capitalized annual repayment (3.225%—50 years .0405420)		$233,583

* Auburn-Folsom Recreation Plan, The Auburn-Folsom Interagency Task Force, October 1966, p. 39.
[a] Excluding interest during construction, state credit will be based upon current market.
[b] Value of lands and facilities rather than actual state investment.

concession operations at reservoir recreation areas operated by the state offset by only 38 percent the direct operating costs of such areas.

This fact of life is further emphasized in an impact study of the Auburn Dam Project which was funded by several local public agencies interested in determining the economics of local operation of all or part of the proposed recreation facilities. This study concluded that

TABLE 5

ESTIMATED RECREATION OPERATION AND MAINTENANCE COSTS *

Auburn-Folsom South Unit

Year of operation [a]	Auburn	Folsom	Total
1	$200,000	$768,000	$968,000
2	213,000	797,000	1,010,000
3	226,000	826,000	1,052,000
4	239,000	855,000	1,094,000
5	252,000	884,000	1,136,000
6	265,000	913,000	1,178,000
7	278,000	942,000	1,220,000
8	291,000	971,000	1,262,000
9	304,000	[b]1,000,000	1,304,000
10	317,000	1,000,000	1,317,000
11	330,000	1,000,000	1,330,000
12	343,000	1,000,000	1,343,000
13	356,000	1,000,000	1,356,000
14	369,000	1,000,000	1,369,000
15	382,000	1,000,000	1,382,000
16	395,000	1,000,000	1,395,000
17	409,000	1,000,000	1,409,000
18	422,000	1,000,000	1,422,000
19	435,000	1,000,000	1,435,000
20	448,000	1,000,000	1,448,000
21	461,000	1,000,000	1,461,000
22	474,000	1,000,000	1,474,000
23	487,000	1,000,000	1,487,000
24	[c]500,000	1,000,000	1,500,000
25	500,000	1,000,000	1,500,000
26	500,000	1,000,000	1,500,000
27	500,000	1,000,000	1,500,000
28	500,000	1,000,000	1,500,000
29	500,000	1,000,000	1,500,000
30	500,000	1,000,000	1,500,000
31	500,000	1,000,000	1,500,000
32	500,000	1,000,000	1,500,000
33	500,000	1,000,000	1,500,000
34	500,000	1,000,000	1,500,000
35	500,000	1,000,000	1,500,000
36	500,000	1,000,000	1,500,000
37	500,000	1,000,000	1,500,000
38	500,000	1,000,000	1,500,000
39	500,000	1,000,000	1,500,000
40	500,000	1,000,000	1,500,000
41	500,000	1,000,000	1,500,000
42	500,000	1,000,000	1,500,000
43	500,000	1,000,000	1,500,000
44	500,000	1,000,000	1,500,000
45	500,000	1,000,000	1,500,000
46	500,000	1,000,000	1,500,000
47	500,000	1,000,000	1,500,000
48	500,000	1,000,000	1,500,000
49	500,000	1,000,000	1,500,000
50	500,000	1,000,000	1,500,000

* *Ibid.*, pp. 45–47.
[a] First year estimated—1977.
[b] Capacity visitation—Folsom—1985.
[c] Capacity visitation—Auburn—2000.

TABLE 6

REVENUE ESTIMATE—AUBURN, FOLSOM AND NATOMA *
Based on Completed Basic Facility Developments

Auburn-Folsom South Unit

Activity	Annual parking capacity			Revenue		
	Fee	Existing	Proposed	Existing facilities	Proposed facilities	Total
General day use	$0.50	186,400	240,000	$93,200	$120,000	$213,200
Boating	1.00	68,600	90,000	68,600	90,000	158,600
Camping	2.00	10,000	37,500	20,000	75,000	95,000
Total				$181,800	$285,000	$466,800

* *Ibid.*, p. 43.

"the operation of recreational facilities as proposed in the state's plan by a county-government entity appears to be undersirable from an economic standpoint" and that "the prevailing fee schedules for the contemplated facilities would result in an annual operating loss." [28]

Tables 4, 5, and 6 indicate the estimated costs associated with nonfederal participation at the Auburn Folsom-South Unit and the revenues that can be expected in connection with the recreation operation. It is estimated that upon completion of basic recreation facility development at the Auburn-Folsom South Unit such facilities will generate revenues of $446,800 annually. This can be compared with the capitalized annual repayment cost of $233,583 over the 50-year repayment period and annual operation and maintenance costs of $968,000 in the initial year of operation (1977). Operation and maintenance costs will increase annually until they reach $1,500,000 in the 24th year of operation.

Simple arithmetic indicates that the recreation facilities at the Auburn-Folsom South Unit will operate at an estimated loss of $734,783 in the initial year of operation. Inasmuch as the State of California is committed to the assumption of these costs it will be necessary to finance any such operating deficit from the state's General Fund. It should be noted that it will also be the responsibility of the state to provide for the replacement of recreation facilities and that the costs associated with this responsibility are not included in these cost estimates.

The agreement between the United States and the State of California providing for state operation of the recreational facilities at the Auburn-Folsom South Unit requires that "all user fees collected by the state shall be deposited in the Special Deposit Fund in the State Treasury from which repayment . . . will be made." *Inasmuch as project revenues have been dedicated to repayment of the nonfederal share of the separable capital costs, it will be necessary, even though there may be a surplus over the annual repayment commitment, to finance all operation, maintenance, and replacement costs from the state's General Fund.*

[28] Impact Study for the Counties of Placer and El Dorado and the City of Auburn, Wilsey and Ham, September 1966, p. 2.

Federal water projects are generally large projects which would involve high recreation development, operation, and maintenance costs. For the most part they will be constructed in counties with relatively sparse population and low assessed value. Obviously, participation in the development, operation, and maintenance of recreation facilities at such projects will be a fiscal impossibility for most local agencies.

It is the opinion of the committee that participation with the federal government under the Federal Water Project Recreation Act at each and every water project to be constructed in California will be impossible to justify on a "recreation basis." Such participation must be considered in relation to the availability of funds for recreation development, the availability of similar recreation opportunities, the demand for such facilities within the project impact area, and the responsibilities of the state to provide various types of recreation development to meet the total statewide need. Such participation at federal water projects should only be considered on a priority basis in relation to other high priority recreation funding requirements.

It must be understood, however, that the absence of such nonfederal participation will result in the loss of substantial benefits to a project's water and power users in that the joint project costs, which are borne by the federal government when recreation and fish and wildlife enhancement are incorporated as project purposes, would become reimbursable by such users.

In the case of the Auburn Dam-Folsom South Unit, the joint project costs will be the responsibility of the federal government by virtue of the state's participation in the project recreation development. The absence of such participation at this project would have resulted in a substantial loss to other project beneficiaries in that the joint costs total nearly $33,000,000.

RESERVOIR RECREATION AREA OPERATION

As evidenced by data presented in the previous section of this report, the economics of reservoir recreation area operation leaves a great deal to be desired. While the committee recognizes that, as a matter of public policy, it will for the most part be impossible to develop a system of user fee charges that will return to the state an amount equal to that being expended for the operation of all such areas, it is the opinion of the committee that considerable improvement in the physical operation of reservoir recreation areas can be accomplished which will have a beneficial effect upon the economics of operation.

The user fee structures for such areas presently fail to return to the state a reasonable portion of the direct operating expense and appear to provide recreational opportunities at a fee which is clearly not commensurate with the type of facility being provided. This fact is clearly demonstrated when one examines the visitor attendance at state-operated reservoir recreation areas in relation to the revenues received from and the direct operating expense of such units.

An examination of Table 7 indicates a very large visitor day attendance of 4,667,199 at the Folsom Lake State Recreation Area during the

TABLE 7

ATTENDANCE, REVENUE, AND OPERATING EXPENSES OF STATE-OPERATED RESERVOIR RECREATION AREAS, 1965–66 FISCAL YEAR

Recreation area	Attendance	Revenue	Operating expense
Benbow Lake	38,485	$3,020	$17,007
Folsom Lake	4,667,199	153,712	398,965
Lake Elsinore	665,429	111,185	323,411
Millerton Lake	651,735	73,928	173,086
Turlock Lake	118,001	27,373	48,247
Totals	6,140,849	$369,218	$960,716

1965–66 fiscal year. However, revenues from such use, including those derived from concession operations, amounted to only $153,712 while operating expenses totalled $398,965. A simple mathematical computation based upon the visitor day use at this area indicates that had only 10 cents been collected from each such user the state would have received $466,719 in revenue which not only would have completely offset the direct operating cost but would have provided some return upon the state's capital investment as well.

The committee recognizes, however, that visitor day attendance data is computed on an extremely loose basis in most instances and are not really representative of actual visitor day use. If such figures were, in fact, representative of visitor day attendance, the present user fee structure would provide a much greater return to the state.

The user charges at state-operated reservoir recreation areas are essentially the same as the charges made for similar types of activity at other units of the state park system. The fee for use of camping facilities varies from $1.50 to $2.50 per night depending upon the type of facility being provided. The fee for the use of picknicking facilities is 50 cents and boat launching facilities is $1.

These fees, when considered in relation to visitor day attendance data, would appear to be reasonable enough and would appear to provide a greater return to the state. However, the basis upon which the fee is levied serves to considerably reduce such revenue inasmuch as these fees are levied upon a per-car rather than a per-person basis. The number of individuals gaining access to a recreation area in a single vehicle is of no importance inasmuch as the fee is the same whether it is one or six.

As an example, it is estimated that the fee use visitor day attendance at the Folsom Lake State Recreation Area was 751,000 during the 1964–65 fiscal year. Had 50 cents been collected for each such visitor day of use the state would have received in excess of $375,000 in revenue or enough to nearly offset the cost of operating the area. A similar situation occurs in the administration of boat launching fees. The boat launching fee at Folsom Lake is $1 and appears to be a reasonable charge for the use of the facilities being provided. However, this boat launching fee also includes the user charge for all persons in the vehicle towing the boat.

While the committee does not desire to make specific recommendations regarding the matter of user fees or with regard to the administration of such fees, it is our feeling that the user fee structure for state-operated reservoir recreation areas are in serious need of review, re-evaluation, and revision. Such an undertaking could well place the operation of these areas on a more economic basis without placing undue hardship upon the recreation user.

Any such review should explore the possibility of administering user fees, at least for adult visitors, on a per-person rather than a per-car basis and, further, should inquire as to the merit of making the charge for the use of launching facilities over and above the charge made for the general use of the recreation area.

The committee is most concerned with improving the economics of reservoir recreation area operations in order to make cooperation under Public Law 89-72 feasible in a larger number of instances and, therefore, feels that, in addition to a reevaluation of the fee schedule, a greater effort should be made to control access to such areas. This is necessary not only to assist in improving the economics of recreation area operation but to assure that all recreation users will share equally the responsibility of financing its operation.

As a general rule user fees are charged only at those points which provide access directly to developed facilities. However, Public Law 89-72 requires the repayment of certain costs, such as the costs of special operation of the reservoir, which are not directly chargeable to the development of specific recreation facilities. At most reservoir recreation areas, such as Folsom Lake, there are numerous points of access at which no user or launching fee is charged. This serves only to limit the ability of the area to produce revenue and serves to enable those individuals knowledgeable of the area to escape their responsibility of participation in the area's fiscal operation.

The committee wishes to acknowledge that access control is a most difficult problem and in many cases is impossible. This is particularly true where the reservoir encompasses a large geographic area. However, it is our opinion that user fees should be collected at all points of access to a reservoir recreation area or the point of access closed. In this regard, the possibility of placing automatic fee collection devices at those points of access where the placing of an attendant could not be justified should be explored.

COOPERATION WITH LOCAL AGENCIES IN PROJECT RECREATION PLANNING

In providing general statutory authority for state cooperation and participation under Public Law 89-72, and, in specifically authorizing such participation at the Auburn-Folsom South Unit, it was the feeling of the Legislature that local cooperation in the planning of a project's recreation features was essential.

This was necessary not only to encourage local participation in the development of these project features but to assure that adequate consideration would be given to local needs, desires, and development plans as well. In authorizing state participation at the Auburn-Folsom South Project the Legislature specifically provided that "the De-

partment (of Parks and Recreation) *shall* cooperate with any local public body authorized to contract with the federal government pursuant to Public Law 89-161, including, but not limited to the Counties of El Dorado, Placer, and Sacramento, in planning of any proposed participation with the federal government . . .'' [29] (emphasis added).

It appears now, however, that the high level of state-local cooperation which the Legislature sought to achieve through the inclusion of this specific statutory requirement has not been attained. At least one local public agency has expressed considerable dissatisfaction with the Auburn-Folsom Recreation Plan as developed by the interagency task force and, additionally, with the level of cooperation between state and local officials during the development of the plan.

The committee during its study of Public Law 89-72 and Assembly Bill 118 became concerned that the specific requirement of cooperation with local government contained in legislation authorizing state participation at the Auburn-Folsom South Project had been given only cursory consideration during the planning of the proposed recreation development. It is now apparent, however, that the difficulties and dissatisfaction encountered in the development of the Auburn-Folsom Recreation Plan were a direct result of a combination of circumstances which, for the most part, were beyond the control of the principals involved and did not result because the legislative directive had been disregarded.

The committee has extensively reviewed the records of the Department of Parks and Recreation in regard to the development of the Auburn-Folsom Recreation Plan and can only conclude that state officials have complied with the letter of the law. In fact, it is our opinion that such officials went beyond what was legally required of them in seeking to attain a high degree of coordination with the affected local public agencies. Numerous meetings were held with the representatives of such agencies during the development of the plan and local officials were, in the opinion of the committee, completely and thoroughly advised at all times and on all aspects of the proposed recreation development.

That there is dissatisfaction on the part of certain local officials is, indeed, unfortunate. However, there are several factors, some of which are peculiar to the Auburn Dam Project, which undoubtedly contributed to whatever difficulties may have been created for local public agencies in the project impact area.

In attempting to determine the causes of such difficulties it must be kept in mind that this is the *first* federal water project subject to the recreation and fish and wildlife enhancement cost sharing provisions of federal law. In fact, specific cost sharing requirements for the Auburn Dam Project were actually adopted by the Congress prior to the enactment of the general statutory provisions of the Federal Water Project Recreation Act.

Obviously, there are many difficulties in establishing the necessary administrative policies and procedures to govern the operation and implementation of any new program. Undoubtedly, difficulties have occurred in this regard at the Auburn Dam Project which contributed, at least in part, to the dissatisfaction with the recreation plan. While this

[29] Section 5006.6, Public Resources Code.

is unfortunate, it is understandable. Aside from the fact that federal agencies were faced with the difficult task of administratively implementing a new program, there were other factors, including the extremely tight schedule under which the Bureau of Reclamation was working, which served to create difficulties in regard to this project.

The Auburn Dam Project was an *authorized* project *for which funding was already available* and *for which a binding agreement in regard to the recreation development was mandatory before construction could be started.* This fact alone demanded the expeditious development of an acceptable recreation plan which coordinated the operation of proposed new recreation facilities at Auburn Reservoir with those already in existence at Folsom Lake State Park.

In order to accomplish this goal and to prepare the recreation plan for the proposed development, an Auburn-Folsom Interagency Task Force was created in December of 1965. The task force was organized during January of 1966 and began the formulation of the detailed recreation plan the following month. While local public agencies did not physically participate in the actual formulation of the recreation plan, which took place between February and June of 1966, such agencies were apprised as to what was being done regarding recreation planning. The liaison with local agencies was accomplished through the Auburn Dam Study Committee which is an organization composed of local public officials representing the various agencies affected by the Auburn Dam Project.

The preliminary plan for the development of recreation facilities was completed and presented to the Auburn Dam Study Committee in June of 1966. Following receipt of this preliminary plan several local agencies became concerned with certain of its implications and the counties of Placer and El Dorado and the City of Auburn contracted with the firm of Wilsey and Ham to conduct an "impact study" of the proposed development. This study was completed in September 1966 and indicated that several serious problems might be created by the recreation plan as proposed. The study indicated that the most difficulty for local government would be one of traffic circulation inasmuch as the proposed plan did not take into account the large volumes of traffic which would be generated by the project and which would be traversing poor, two-lane county roads.

The Auburn Dam Study Committee formally received the final interagency task force plan on September 18 and at the same time received alternate park and land use proposals from county officials. The next day, September 19, this plan was presented to and endorsed by the State Park Commission subject to further review with local agencies and such modifications as in the judgment of the parties might become necessary. Although the necessity of expediting project recreation planning is acknowledged, it is the feeling of the committee that too little time was afforded for the review of the final plan prior to its adoption.

However, it is noted that the agencies responsible for the development of the Auburn-Folsom Recreation Plan are now assisting local agencies in seeking satisfactory solutions to possible problems which may be created by the adopted recreation plan. Specifically, the committee wishes to make mention of the fact that the U.S. Bureau of Reclamation has made available $20,000 to study the traffic circulation problem and

has indicated that additional funding will be available to find acceptable solutions not only to this problem but to any others that may become evident as well.

While it is the feeling of the committee that the planning for the Auburn-Folsom South Project has been handled well under somewhat adverse circumstances, it is also our feeling that additional assurances are necessary in order to make absolutely certain that the needs and desires of local public agencies will be given adequate consideration during the development of recreation plans for any project to which the state is a party.

Therefore, it is the recommendation of this committee that the statutory provisions authorizing and regulating state participation under Public Law 89-72 be amended to specifically require that affected local agencies be brought into the planning of a project's recreation features, to require that the final project recreation plan be submitted to such agencies for review and comment, and to require that the Resources Agency Administrator include such comments in his report to the Governor and the Legislature.

APPENDIX I-a

Public Law 89-72
89th Congress, S. 1229
July 9, 1965

AN ACT

To provide uniform policies with respect to recreation and fish and wildlife benefits and costs of Federal multiple-purpose water resource projects, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that it is the policy of the Congress and the intent of this Act that (a) in investigating and planning any Federal navigation, flood control, reclamation, hydroelectric, or multiple-purpose water resource project, full consideration shall be given to the opportunities, if any, which the project affords for outdoor recreation and for fish and wildlife enhancement and that, wherever any such project can reasonably serve either or both of these purposes consistently with the provisions of this Act, it shall be constructed, operated, and maintained accordingly; (b) planning with respect to the development of the recreation potential of any such project shall be based on the coordination of the recreational use of the project area with the use of existing and planned Federal, State, or local public recreation developments; and (c) project construction agencies shall encourage non-Federal public bodies to administer project land and water areas for recreation and fish and wildlife enhancement purposes and operate, maintain, and replace facilities provided for those purposes unless such areas or facilities are included or proposed for inclusion within a national recreation area, or are appropriate for administration by a Federal agency as a part of the national forest system, as a part of the public lands classified for retention in Federal ownership, or in connection with an authorized Federal program for the conservation and development of fish and wildlife.

Sec. 2. (a) If, before authorization of a project, non-Federal public bodies indicate their intent in writing to agree to administer project land and water areas for recreation or fish and wildlife enhancement or for both of these purposes pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and to bear not less than one-half the separable costs of the project allocated to either or both of said purposes, as the case may be, and all the costs of operation, maintenance, and replacement incurred therefor—

(1) the benefits of the project to said purpose or purposes shall be taken into account in determining the economic benefits of the project;

(2) costs shall be allocated to said purpose or purposes and to other purposes in a manner which will insure that all project purposes share equitably in the advantages of multiple-purpose construction: *Provided,* That the costs allocated to recreation or

fish and wildlife enhancement shall not exceed the lesser of the benefits from those functions or the costs of providing recreation or fish and wildlife enhancement benefits of reasonably equivalent use and location by the least costly alternative means; and

(3) not more than one-half the separable costs and all the joint costs of the project allocated to recreation and fish and wildlife enhancement shall be borne by the United States and be nonreimbursable.

Projects authorized during the calendar year 1965 may include recreation and fish and wildlife enhancement on the foregoing basis without the required indication of intent. Execution of an agreement as aforesaid shall be a prerequisite to commencement of construction of any project to which this subsection is applicable.

(b) The non-Federal share of the separable costs of the project allocated to recreation and fish and wildlife enhancement shall be borne by non-Federal interests, under either or both of the following methods as may be determined appropriate by the head of the Federal agency having jurisdiction over the project: (1) payment, or provision of lands, interests therein, or facilities for the project; or (2) repayment, with interest at a rate comparable to that for other interest-bearing functions of Federal water resource projects, within fifty years of first use of project recreation or fish and wildlife enhancement facilities: *Provided,* That the source of repayment may be limited to entrance and user fees or charges collected at the project by non-Federal interests if the fee schedule and the portion of fees dedicated to repayment are established on a basis calculated to achieve repayment as aforesaid and are made subject to review and renegotiation at intervals of not more than five years.

Sec. 3. (a) No facilities or project modifications which will furnish recreation or fish and wildlife enhancement benefits shall be provided in the absence of the indication of intent with respect thereto specified in subsection 2(a) of this Act unless (1) such facilities or modifications serve other project purposes and are justified thereby without regard to such incidental recreation or fish and wildlife enhancement benefits as they may have or (2) they are minimum facilities which are required for the public health and safety and are located at access points provided by roads existing at the time of project construction or constructed for the administration and management of the project. Calculation of the recreation and fish and wildlife enhancement benefits in any such case shall be based on the number of visitor-days anticipated in the absence of recreation and fish and wildlife enhancement facilities or modifications except as hereinbefore provided and on the value per visitor-day of the project without such facilities or modification. Project costs allocated to recreation and fish and wildlife enhancement on this basis shall be nonreimbursable.

(b) Notwithstanding the absence of an indication of intent as specified in subsection 2(a), lands may be provided in connection with project construction to preserve the recreation and fish and wildlife enhancement potential of the project:

(1) If non-Federal public bodies execute an agreement within ten years after initial operation of the project (which agreement

shall provide that the non-Federal public bodies will administer project land and water areas for recreation or fish and wildlife enhancement or both pursuant to the plan for the development of the project approved by the head of the agency having administrative jurisdiction over it and will bear not less than one-half the costs of lands, facilities, and project modifications provided for either or both of those purposes, as the case may be, and all costs of operation, maintenance, and replacement attributable thereto) the remainder of the costs of lands, facilities, and project modifications provided pursuant to this paragraph shall be nonreimbursable. Such agreement and subsequent development, however, shall not be the basis for any reallocation of joint costs of the project to recreation or fish and wildlife enhancement.

(2) If, within ten years after initial operation of the project, there is not an executed agreement as specified in paragraph (1) of this subsection, the head of the agency having jurisdiction over the project may utilize the lands for any lawful purpose within the jurisdiction of his agency, or may offer the land for sale to its immediate prior owner or his immediate heirs at its appraised fair market value as approved by the head of the agency at the time of offer or, if a firm agreement by said owner or his immediate heirs is not executed within ninety days of the date of the offer, may transfer custody of the lands to another Federal agency for use for any lawful purpose within the jurisdiction of that agency, or may lease the lands to a non-Federal public body, or may transfer the lands to the Administrator of General Services for disposition in accordance with the surplus property laws of the United States. In no case shall the lands be used or made available for use for any purpose in conflict with the purposes for which the project was constructed, and in every case except that of an offer to purchase made, as hereinbefore provided, by the prior owner or his heirs preference shall be given to uses which will preserve and promote the recreation and fish and wildlife enhancement potential of the project or, in the absence thereof, will not detract from that potential.

SEC. 4. At projects, the construction of which has commenced or been completed as of the effective date of this Act, where non-Federal public bodies agree to administer project land and water areas for recreation and fish and wildlife enhancement purposes and to bear the costs of operation, maintenance, and replacement of existing facilities serving those purposes, such facilities and appropriate project lands may be leased to non-Federal public bodies.

SEC. 5. Nothing herein shall be construed as preventing or discouraging postauthorization development of any project for recreation or fish and wildlife enhancement or both by non-Federal public bodies pursuant to agreement with the head of the Federal agency having jurisdiction over the project. Such development shall not be the basis for any allocation or reallocation of project costs to recreation or fish and wildlife enhancement.

SEC. 6. (a) The views of the Secretary of the Interior developed in accordance with section 3 of the Act of May 28, 1963 (77 Stat. 49),

with respect to the outdoor recreation aspects shall be set forth in any report of any project or appropriate unit thereof within the purview of this Act. Such views shall include a report on the extent to which the proposed recreation and fish and wildlife development conforms to and is in accord with the State comprehensive plan developed pursuant to subsection 5(d) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897).

(b) The first proviso of subsection 2(d) of the Act of August 12, 1958 (72 Stat. 563; 16 U.S.C.662(d)), is amended to read as follows: "*Provided,* That such cost attributable to the development and improvement of wildlife shall not extend beyond that necessary for (1) land acquisition, (2) facilities as specifically recommended in water resource project reports, (3) modification of the project, and (4) modification of project operations, but shall not include the operation of wildlife facilities." The second proviso of subsection 2(d) of said Act is hereby repealed.

(c) Expenditures for lands or interests in lands hereafter acquired by project construction agencies for the establishment of migratory waterfowl refuges recommended by the Secretary of the Interior at Federal water resource projects, when such lands or interests in lands would not have been acquired but for the establishment of a migratory waterfowl refuge at the project, shall not exceed $28,000,000: *Provided,* That the aforementioned expenditure limitation in this subsection shall not apply to the costs of mitigating damages to migratory waterfowl caused by such water resource project.

(d) This act shall not apply to the Tennessee Valley Authority, nor to projects constructed under authority of the Small Reclamation Projects Act, as amended, or under authority of the Watershed Protection and Flood Prevention Act, as amended.

(e) Sections 2, 3, 4, and 5 of this Act shall not apply to nonreservoir local flood control projects, beach erosion control projects, small boat harbor projects, hurricane protection projects, or to project areas or facilities authorized by law for inclusion within a national recreation area or appropriate for administration by a Federal agency as a part of the national forest system, as a part of the public lands classified for retention in Federal ownership, or in connection with an authorized Federal program for the conservation and development of fish and wildlife.

(f) As used in this Act, the term "nonreimbursable" shall not be construed to prohibit the imposition of entrance, admission, and other recreation user fees or charges.

(g) Subsection 6(a)(2) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) shall not apply to costs allocated to recreation and fish and wildlife enhancement which are borne by the United States as a nonreimbursable project cost pursuant to subsection 2(a) or subsection (3)(b)(1) of this Act.

(h) All payments and repayment by non-Federal public bodies under the provisions of this Act shall be deposited in the Treasury as miscellaneous receipts, and revenue from the conveyance by deed, lease, or otherwise, of lands under subsection 3(b)(2) of this Act shall be deposited in the Land and Water Conservation Fund.

SEC. 7. (a) The Secretary is authorized, in conjunction with any reservoir heretofore constructed by him pursuant to the Federal reclamation laws or any reservoir which is otherwise under his control, except reservoirs within national wildlife refuges, to investigate, plan, construct, operate and maintain, or otherwise provide for public outdoor recreation and fish and wildlife enhancement facilities, to acquire or otherwise make available such adjacent lands or interest therein as are necessary for public outdoor recreation or fish and wildlife use, and to provide for public use and enjoyment of project lands, facilities, and water areas in a manner coordinated with the other project purposes: *Provided,* That not more than $100,000 shall be available to carry out the provisions of this subsection at any one reservoir. Lands, facilities and project modifications for the purposes of this subsection may be provided only after an agreement in accordance with subsection 3(b) of this Act has been executed.

(b) The Secretary of the Interior is authorized to enter into agreements with Federal agencies or State or local public bodies for the administration of project land and water areas and the operation, maintenance, and replacement of facilities and to transfer project lands or facilities to Federal agencies or State or local public bodies by lease agreement or exchange upon such terms and conditions as will best promote the development and operation of such lands or facilities in the public interest for recreation and fish and wildlife enhancement purposes.

(c) No lands under the jurisdiction of any other Federal agency may be included for or devoted to recreation or fish and wildlife purposes under the authority of this section without the consent of the head of such agency; and the head of any such agency is authorized to transfer any such lands to the jurisdiction of the Secretary of the Interior for purposes of this section. The Secretary of the Interior is authorized to transfer jurisdiction over project lands within or adjacent to the exterior boundaries of national forests and facilities thereon to the Secretary of Agriculture for recreation and other national forest system purposes; and such transfer shall be made in each case in which the project reservoir area is located wholly within the exterior boundaries of a national forest unless the Secretaries of Agriculture and Interior jointly determine otherwise. Where any project lands are transferred hereunder to the jurisdiction of the Secretary of Agriculture, the lands involved shall become national forest lands: *Provided,* That the lands and waters within the flow lines of any reservoir or otherwise needed or used for the operation of the project for other purposes shall continue to be administered by the Secretary of the Interior to the extent he determines to be necessary for such operation. Nothing herein shall limit the authority of the Secretary of the Interior granted by existing provisions of law relating to recreation or fish and wildlife development in connection with water resource projects or to disposition of public lands for such purposes.

SEC. 8. Effective on and after July 1, 1966, neither the Secretary of the Interior nor any bureau nor any person acting under his authority shall engage in the preparation of any feasibility report under reclamation law with respect to any water resource project unless the

preparation of such feasibility report has been specifically authorized by law, any other provision of law to the contrary notwithstanding.

SEC. 9. Nothing contained in this Act shall be taken to authorize or to sanction the construction under the Federal reclamation laws or under any Rivers and Harbors or Flood Control Act of any project in which the sum of the allocations to recreation and fish and wildlife enhancement exceeds the sum of the allocations to irrigation, hydroelectric power, municipal, domestic and industrial water supply, navigation, and flood control, except that this section shall not apply to any such project for the enhancement of anadromous fisheries, shrimp, or for the conservation of migratory birds protected by treaty, when each of the other functions of such a project has, of itself, a favorable benefit-cost ratio.

SEC. 10. As used in this Act:

(a) The term "project" shall mean a project or any appropriate unit thereof.

(b) The term "separable costs," as applied to any project purpose, means the difference between the capital cost of the entire multiple-purpose project and the capital cost of the project with the purpose omitted.

(c) The term "joint costs" means the difference between the capital cost of the entire multiple-purpose project and the sum of the separable costs for all project purposes.

(d) The term "feasibility report" shall mean any report of the scope required by the Congress when formally considering authorization of the project of which the report treats.

(e) The term "capital cost" includes interest during construction, wherever appropriate.

SEC. 11. Section 2, subsection (a) of the Land and Water Conservation Fund Act of 1965 (78 Stat. 897) is hereby amended by striking out the words "notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury:" and inserting in lieu thereof the words "notwithstanding any other provision of law:" and by striking out the words "or any provision of law that provides that any fees or charges collected at particular Federal areas shall be used for or credited to specific purposes or special funds as authorized by that provision of law" and inserting in lieu thereof "or affect any contract heretofore entered into by the United States that provides that such revenues collected at particular Federal areas shall be credited to specific purposes".

SEC. 12. This Act may be cited as the "Federal Water Project Recreation Act".

Approved July 9, 1965.

LEGISLATIVE HISTORY:

House Reports: No. 254 accompanying H. R. 5269 (Comm. on Interior & Insular Affairs) and No. 538 (Comm. of Conference).

Senate Report No. 149 (Comm. on Interior & Insular Affairs).

Congressional Record, Vol. 111, (1965):

April 13: Considered and passed Senate.
May 18: Considered and passed House, amended, in lieu of H. R. 5269.
June 23: House agreed to conference report.
June 25: Senate agreed to conference report.

APPENDIX I-b

Public Law 89-161
89th Congress, H.R. 485
September 2, 1965

AN ACT

To authorize the Secretary of the Interior to construct, operate, and maintain the Auburn-Folsom South unit, American River division, Central Valley project, California, under Federal reclamation laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the principal purpose of increasing the supply of water available for irrigation and other beneficial uses in the Central Valley of California, the Secretary of the Interior (hereinafter referred to as the "Secretary"), acting pursuant to the Federal reclamation laws (Act of June 17, 1902; 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), is authorized to construct, operate, and maintain, as an addition to, and an integral part of, the Central Valley project, California, the Auburn-Folsom South unit, American River division. The principal works of the unit shall consist of—

(1) the Auburn Dam and Reservoir with maximum water surface elevation of one thousand one hundred and forty feet above mean sea level, and capacity of approximately two and one-half million acre-feet;

(2) a hydroelectric powerplant at Auburn Dam with initial installed capacity of approximately two hundred and forty thousand kilowatts and necessary electric transmission system for interconnection with the Central Valley project power system: *Provided,* That provision may be made for the ultimate development of the hydroelectric capacity (now estimated at approximately four hundred thousand kilowatts) and such installation may be made when duly authorized by an Act of Congress: *Provided further,* That no facilities, except those required for interconnecting the Auburn powerplant and the Folsom switchyard and those interconnecting the Folsom switchyard and the Elverta substation, shall be constructed for electric transmission or distribution service which the Secretary determines, on the basis of a firm offer of a fifty-year contract from a local public or private agency, can be obtained at less cost to the Federal Government than by construction and operation of Government facilities;

(3) the Sugar Pine Dam and Reservoir;

(4) the County Line Dam and Reservoir;

(5) necessary diversion works, conduits, and other appurtenant works for the delivery of water supplies to projects on the Forest Hill Divide in Placer County and in the Folsom-Malby area in Sacramento and El Dorado Counties;

(6) the Folsom South canal and such related structures, including pumping plants, regulating reservoirs, floodways, chan-

nels, levees, and other appurtenant works for the delivery of water as the Secretary determines will best serve the needs of Sacramento and San Joaquin Counties: *Provided,* That the Secretary is authorized to include in such canal and related operating structures such additional works or capacity as he deems necessary and economically justified to provide for the future construction of the East Side division of the Central Valley project, and the incremental costs of providing additional works or capacity in the Folsom South canal to serve the East Side division of the Central Valley project shall be assigned to deferred use for repayment from Central Valley project revenues. In the event that the East Side division is authorized, such costs shall be deemed a part of the cost of that division and shall be reallocated as the Secretary deems right and proper.

SEC. 2. Subject to the provisions of this Act, the operation of the Auburn-Folsom South unit, American River division, shall be integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the Central Valley project, as presently authorized and as may in the future be authorized by Act of Congress, in such manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available. Auburn and County Line Dams shall be operated for flood control in accordance with criteria established by the Secretary of the Army as provided for in section 7 of the Flood Control Act of 1944 (58 Stat. 887; 33 U.S.C. 709).

SEC. 3. (a) Subject to the provisions of subsections (b), (c), (d), and (e) of this section, the Secretary is authorized in connection with the Auburn-Folsom South unit (i) to construct, operate, and maintain or provide for the construction, operation, and maintenance of public outdoor recreation and fish and wildlife enhancement facilities, (ii) to acquire or otherwise to include within the unit area such adjacent lands or interests in land as are necessary for present or future public recreation or fish and wildlife use, (iii) to allocate water and reservoir capacity to recreation and fish and wildlife enhancement, and (iv) to provide for the public use and enjoyment of unit lands, facilities, and water areas in a manner coordinated with other unit purposes. The Secretary is further authorized to enter into agreements with Federal agencies or State or local public bodies for the operation, maintenance, and replacement of unit facilities, and to transfer unit lands or facilities to Federal agencies or State or local public bodies by lease or exchange, upon such terms and conditions as will best promote the development and operation of such lands or facilities in the public interest for recreation and fish and wildlife enhancement purposes.

(b) Costs of recreation facilities at Sugar Pine Reservoir shall be nonreimbursable, and the provisions of subsections (c), (d), and (e) of this section shall not be applicable to such facilities.

(c)(1) If, before commencement of construction of the unit, non-Federal public bodies agree to administer unit land and water areas for recreation or fish and wildlife enhancement or for both of these

purposes pursuant to the plan for the development of the unit approved by the Secretary and to bear not less than one-half the separable costs of the unit allocated to either or both of said purposes, as the case may be, and all the costs of operation, maintenance, and replacement incurred in connection therewith, the remainder of the separable capital costs so allocated shall be nonreimbursable.

(2) In the absence of such a preconstruction agreement recreation and fish and wildlife enhancement facilities (other than minimum facilities for the public health and safety at reservoir access points) shall not be provided, and the allocation of unit costs shall reflect only the number of visitor days and the value per visitor day estimated to result from such diminished recreation development without reference to lands which may be provided pursuant to subsection (e) of this section.

(d) The non-Federal share of the separable capital costs of the unit allocated to recreation and fish and wildlife enhancement shall be borne by non-Federal interests, under either or both of the following methods as may be determined appropriate by the Secretary: (i) payment, or provision of lands, interests therein, or facilities for the unit; or (ii) repayment, with interest, within fifty years of first use of unit recreation or fish and wildlife enhancement facilities: *Provided,* That the source of repayment may be limited to entrance and user fees or charges collected at the unit by non-Federal interests if the fee schedule and the portion of fees dedicated to repayment are established on a basis calculated to achieve repayment as aforesaid and are made subject to review and renegotiation at intervals of not more than five years.

(e) Notwithstanding the absence of preconstruction agreements as specified in subsection (c) of this section lands may be acquired in connection with construction of the unit to preserve its recreation potential, its fish and wildlife enhancement potential, or both.

(1) If non-Federal public bodies agree within ten years after initial unit operation to administer unit land and water areas for recreation and fish and wildlife enhancement pursuant to the plan for development of the unit approved by the Secretary and to bear not less than one-half the cost of land acquired therefor pursuant to this subsection and facilities and project modifications provided for those purposes and all costs of operation, maintenance, and replacement incurred therefor, the remainder of the costs of such lands, facilities, and project modifications shall be nonreimbursable. Such agreement and subsequent development shall not be the basis for any allocation of joint costs of the unit to recreation or fish and wildlife enhancement.

(2) If, within ten years after initial operation of the unit, there is not an executed agreement as specified in paragraph (1) of this subsection, the Secretary may utilize the lands for any lawful purpose within the jurisdiction of the Department of the Interior, or may transfer custody of the lands to another Federal agency for use for any lawful purpose within the jurisdiction of that agency, or may lease the lands to a non-Federal public body, or may transfer the lands to the Administrator of General Services for disposition in accordance with the surplus property laws of the United States. In no case shall the lands be used or made available for use for any purpose in conflict with the purposes for which the project was constructed, and

in every case preference shall be given to uses which will preserve and promote the recreation and fish and wildlife ehhancement potential of the project or, in the absence thereof, will not detract from that potential.

(f) Subject to the limitations hereinbefore stated, joint capital costs allocated to recreation and fish and wildlife enhancement shall be nonreimbursable.

(g) Costs of means and measures to prevent loss of and damage to fish and wildlife shall be treated as unit costs and allocated among all unit purposes.

(h) As used in this Act, the term "nonreimbursable" shall not be construed to prohibit the imposition of entrance, admission, and other recreation user fees or charges.

SEC. 4. In locating and designing the works and facilities authorized for construction by this Act, and in acquiring or withdrawing any lands as authorized by this Act, the Secretary shall give due consideration to the reports upon the California water plan prepared by the State of California, and shall consult the local interests who may be affected by the construction and operation of said works and facilities or by the acquisition or withdrawal of lands, through public hearings or in such manner as in his discretion may be found best suited to a maximum expression of the views of such local interests.

SEC. 5. Nothing contained in this Act shall be construed by implication or otherwise as an allocation of water, and in the studies for the purposes of developing plans for disposal of water as herein authorized the Secretary shall make recommendations for the use of water in accord with State water laws, including but not limited to such laws giving priority to the counties and areas of origin for present and future needs.

SEC. 6. There is hereby authorized to be appropriated for construction of the Auburn-Folsom South unit, American River division, the sum of $425,000,000 (1965 prices), plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the types of construction involved herein. There are also authorized to be appropriated such additional sums as may be required for operation and maintenance of the project.

Approved September 2, 1965.

LEGISLATIVE HISTORY:

House Report No. 295 (Comm. on Interior and Insular Affairs).

Senate Report No. 312 accompanying S.599 (Comm. on Interior and Insular Affairs).

Congressional Record, Vol. 111 (1965):
June 16: Considered and passed House.
August 20: Considered and passed Senate, in lieu of S. 599.

APPENDIX I-c

Assembly Bill No. 118

CHAPTER 143

An act to add Section 5006.7 and Chapter 1.5 (commencing with Section 5094) to Division 5 of the Public Resources Code, relating to state cooperation and participation with the federal government with respect to recreation and fish and wildlife enhancement facilities at federal water projects, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 1, 1966. Filed with Secretary of State July 1, 1966.]

The people of the State of California do enact as follows:

SECTION 1. Section 5006.7 is added to the Public Resources Code, to read:

5006.7. Pursuant to the provisions of Chapter 1.5 (commencing with Section 5094) of this division, the Administrator of the Resources Agency may indicate in writing the state's intent to agree to administer the project land and water areas at the Marysville Dam and Reservoir Project on the Yuba River for recreation or fish and wildlife enhancement, or both of these purposes, as provided in Public Law 89-72.

SEC. 2. Chapter 1.5 (commencing with Section 5094) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 1.5. FEDERAL WATER PROJECT RECREATION ACT

5094. It is hereby declared to be in the public interest for the state and local public agencies to participate with the federal government with respect to recreation and fish and wildlife enhancement facilities at federal water projects to the extent that such facilities are deemed necessary and desirable by the state or local public agency participating. The state may participate in any such project to the extent that it is of statewide importance and that local public agencies are unwilling or unable to do so and to the extent the Legislature appropriates funds necessary therefor. The state and local agencies may cooperate and jointly participate in a project where the interests of both will be advantageously served.

5094.1. The Administrator of the Resources Agency, with approval of the Director of Finance and upon specific authorization by the Legislature, may indicate in writing the state's intent to agree to administer any federal multiple-purpose water project land and water areas for recreation or fish and wildlife enhancement, or both of these purposes, as provided in Public Law 89-72. The administrator, as to each proposed state participation, shall submit any proposed indication of intent, together with supporting material, to the Legislature.

The administrator, before requesting legislative authorization, shall determine that the proposed state participation in the project is in compliance with all comprehensive water, recreation, and fish and wild-

life plans of the state, and that to the extent the state intends to participate there is no local public agency willing and able to participate and that the state's participation alone or in cooperation with local agencies is justified on the basis of statewide importance.

5094.2. The Resources Agency through the Department of Parks and Recreation and the Department of Fish and Game shall conduct an investigation and study of the project with respect to the areas of interest of each and prepare plans of the proposed state participation therein. The agency shall submit a report to the Governor and to the Legislature, which report shall contain such plans, a statement of the agency's determination that the proposed state participation therein is in compliance with comprehensive water, recreation, and fish and wildlife plans of the state, and statements of the agency's determination that to the extent the state proposes to participate in the project, there is no local public agency willing and able to participate and that the state's participation alone or in cooperation with local agencies is justified on the basis of statewide importance.

5094.3. With respect to each project as to which a letter of intent has been given, and upon specific authorization by the Legislature:

(a) The Department of Parks and Recreation and the Department of Fish and Game may cooperate and participate with the federal government pursuant to Public Law 89-72 in the development of recreation and fish and wildlife enhancement at federal water projects. Where both the recreation and fish and wildlife enhancement functions are involved in a project the department having the principal interest as designated by the Administrator of the Resources Agency shall be the contracting agency with the federal government. In such case the contract shall be subject to approval of the other department.

(b) The departments may (1) administer unit land and water areas for recreation or fish and wildlife enhancement, or both, (2) contract with the federal government for the operation, maintenance, and replacement of unit facilities, (3) assume all costs of such operation, maintenance, and replacement, and (4) accept transfer of unit lands or facilities by lease or exchange upon such terms and conditions as will best promote the development and operation of such lands or facilities in the public interest for recreation or fish and wildlife enhancement purposes, or both.

(c) The departments may enter into a contract or contracts with the federal government to pay or repay one-half of the separable capital costs involved in the development of the recreation or fish and wildlife enhancement features, or both, at the project pursuant to the provisions of Public Law 89-72, consistent with the reports provided for in Section 5094.2. The agreement for the payment or repayment of the separable capital costs shall be limited to those recreation or fish and wildlife enhancement facilities, or both, specified in the contract. Such payments or repayments may be made by any or all of the following methods: by legislative appropriation; by provision of lands, interests therein, or facilities for the project; or by a contract or contracts for repayment, with interest, within 50 years of first use of project recreation or fish and wildlife enhancement facilities specified in the

contract or contracts. The source of repayment may be limited to entrance and user fees or charges collected at the project by the contracting department if such fees or charges dedicated to repayment are established on a basis calculated to achieve repayment and are made subject to review and renegotiation at intervals of not more than five years. If the source of repayment is so limited, revenues derived from such fees or charges shall be deposited in a special account in the Special Deposit Fund in the State Treasury and used for the purpose of such repayment. If not so limited, the source of repayment shall be such appropriations of funds as may from time to time be made for such purpose by the Legislature.

5094.4. This chapter shall not apply to the cooperation and participation with the federal government pursuant to Public Law 89-161 in the development of recreation facilities or fish and wildlife enhancement facilities, or both, at Auburn Dam and Reservoir, Folsom Dam and Reservoir, Nimbus Dam and Lake Natomas, and County Line Dam and Reservoir, and stream areas in the immediate vicinity of these facilities.

5094.5. This chapter shall be known and may be cited as the Porter-Cobey Federal Water Project Recreation Act.

SEC. 3. This act is an urgency measure necessary for the immediate preservation of the public peace, health or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

There are presently pending before Congress authorization bills for federal water projects in this state. In order that this state may participate in these projects in the development of recreation and fish and wildlife enhancement, it is essential that this act go into immediate effect.

APPENDIX I-d

STATE OF CALIFORNIA
OFFICE OF LEGISLATIVE COUNSEL
Sacramento, California, December 16, 1966

HONORABLE JAMES A. COBEY
P.O. Box 1229
Merced, California 95341

FEDERAL WATER PROJECT RECREATION ACT—No. 8716

Dear Senator Cobey:

QUESTION

You have referred us to the Federal Water Project Recreation Act (Pub. L. 89-72, 16 U.S.C. 460*l*-12–460*l*-21, incl.) and have asked what legal effect, if any, attaches when a state or local agency issues a letter of intent to participate in recreation and fish and wildlife enhancement facilities at federal water resources projects.

OPINION

In our opinion, issuance of a letter of intent to participate in recreation and fish and wildlife enhancement facilities at federal water resources projects by a state or local agency meets the condition precedent established by the Federal Water Project Recreation Act to the federal government specifically authorizing inclusion of recreation and fish and wildlife enhancement facilities at the project.

ANALYSIS

The Federal Water Project Recreation Act (Pub. L. 89-72, 16 U.S.C. 460*l*-12–460*l*-21, incl.)* provides for the planning and development of recreation and fish and wildlife enhancement features of federal water resources projects. The Recreation Act encourages local participation in the recreation and fish and wildlife enhancement development of federal water resources projects. Thus, the Recreation Act authorizes the federal government, prior to commencement of construction of the project, to execute agreements with local agencies whereby the local agency agrees to administer project land and water areas for recreation and fish and wildlife enhancement or both and to pay or repay at least one-half of the separable costs allocated to recreation and fish and wildlife enhancement with the federal government agreeing in turn to pay up to one-half of the separable costs allocated to such purposes and all joint costs of the project allocated to such purposes. The local agency can finance its obligations under such an agreement by cash, lands and facilities, or it may pay the amount due with interest under a long-term contract not exceeding 50 years.

However, prior to executing such an agreement the state or local agency must furnish the federal government with a letter of intent to the effect that it intends to enter into such an agreement. This is done

* Hereafter referred to as the Recreation Act.

prior to the project's authorization (16 U.S.C. 460*l*-13(a)). The question presented is what legal effect is given to such a letter of intent.

Based upon our examination of the legislative history of the Recreation Act we think that the letter of intent serves only the limited purpose of permitting provision to be made for recreation and fish and wildlife enhancement at a federal water resources project since the legislative history of the Recreation Act specifically states:

> ". . . A statement of intent to participate by non-Federal public bodies is generally required by the bill if provision is to be made specifically for recreation and fish and wildlife enhancement at a project.
>
> . . . . . .
>
> "If, after indicating intent to participate, non-Federal interests do not execute such an agreement, the project will be treated as though there had been no original statement of intent and will be constructed under provisions similar to those contained in section 3." (U.S. Code Cong. and Adm. News, 1965, p. 1872).

The above reference to Section 3 means that in the event that a state or local agency issues a letter of intent but subsequently fails to execute the required agreement prior to commencement of project construction, the project will be constructed without *specific* facilities for recreation and fish and wildlife enhancement, although, facilities serving other project purposes having incidental recreation and fish and wildlife enhancement features and certain minimal public health and safety facilities will still be constructed (16 U.S.C. 460*l*-14(a)). It should be noted that in this instance the federal government may still preserve the recreation and fish and wildlife enhancement potential of the project through making provision for lands in connection with project construction for such purposes (16 U.S.C. 460*l*-14(b)).

Thus, in our opinion, the only legal effect that a letter of intent has is to meet the condition precedent to the federal government specifically authorizing inclusion of recreation and fish and wildlife enhancement facilities at the pertinent federal water resources project.

Very truly yours,

George H. Murphy
Legislative Counsel

By Carey W. Royster
Deputy Legislative Counsel

APPENDIX I-e

THE GOVERNOR OF ARIZONA
SAMUEL P. GODDARD

April 28, 1966

HONORABLE FLOYD E. DOMINY, *Commissioner*
Bureau of Reclamation
Department of Interior
Washington, D.C.

Dear Commissioner Dominy:

As you are aware, there are pending before the Congress numerous bills to authorize the construction, operation and maintenance of the Lower Colorado River Basin Project. Certain proposed amendments to those bills would change the name of that project to the Colorado River Basin Project.

Under the provisions of the Federal Water Project Recreation Act of 1965, Public Law 89-72, 89th Congress, relative to the payment of nonfederal costs for the construction of separable facilities to serve recreation and fish and wildlife, it is necessary for a state to indicate an intention to make a contribution toward the costs of such separable facilities in order for those facilities to be considered in the planning and development of the project.

Insofar as the Colorado River Basin Project is concerned, we are not at this time in a position to know the amount of the costs which would be required to construct, operate and maintain separable facilities to serve recreation and fish and wildlife and, consequently, we cannot know the extent of contribution to be required from the State of Arizona were such facilities to be considered. However, it is my personal opinion that contributions by the state to the development of recreation and fish and wildlife facilities as a part of the Colorado River Basin Project would greatly promote the economy and welfare of the State of Arizona. I have discussed this matter with the appropriate state officials and they share in my opinion.

While it is not within my power to commit the State of Arizona to make contributions in the future in undetermined amounts, it will be my policy, as long as I am Governor of the State of Arizona, to encourage the maximum amount of participation of this state in the development of recreation and fish and wildlife features of the Colorado River Basin Project. I am quite confident that this will be the future policy of our entire state government. This letter is, therefore, the notice of intent of the State of Arizona in connection with future federal reclamation projects in this state to administer project land and water areas for recreation, for fish and wildlife enhancement, or for both purposes, and to bear up to one-half the separable costs of this project allocated to either or both said purposes and the entire cost of operation, maintenance and replacement.

We anticipate that our share of the cost will be determined as provided in Section 2(b) (b) of the Federal Water Project Recreation Act.

I trust that this communication makes the intent of Arizona clear enough so that authorization of a Colorado River Basin Project can proceed on the basis of our participation. It is, of course, my understanding and intention that before any construction is started on any of those aspects of the Colorado River Basin Project the details of the proposals will be presented to the appropriate state officials and that mutually acceptable contractual arrangements will be negotiated and executed to satisfy the requirements of the Federal Water Recreation Project Act.

Sincerely,

SAM GODDARD
Governor (signed)

Chapter II

OROVILLE DAM INVESTIGATION CONSULTANTS' REPORT

FOREWORD

The following report concerning the adequacy and safety of the principal construction at the Oroville Dam complex was prepared by Mr. William J. O'Connell and Professor P. F. Keim of the University of California during the summer and fall of 1965.

This report reflects conditions as they existed prior to that time and is not to be interpreted as an analysis or criticism of the present construction activity. It was Mr. O'Connell's intention to enlarge upon this report so as to reflect current conditions. However, his untimely death precluded the accomplishment of this task.

Findings and Recommendations of P. F. Keim and W. J. O'Connell, Consultants, Concerning the Adequacy and Safety of the Principal Construction at the Oroville Dam Complex

The consultants, William J. O'Connell and Professor Paul F. Keim were members of the Senate Water Resources Subcommittee inspection trip to the Oroville Project on March 12, 1965. This was the second inspection trip with the Senate committee for Professor Keim. Subsequently, as authorized by the committee, Senator Pittman's office was notified that Professor Keim would arrive at Prospector's Village in Oroville Thursday evening, March 18 at or about 2000. Likewise, Mr. Addison Wilber was notified, and at 2210 on Thursday evening Mr. Wilber telephoned to arrange the program for the following day. On Friday morning, Senator Pittman and Professor Keim met by chance at the Prospector's Village.

Mr. Rodney Mims, the Oro-Dam contractors' manager, also greeted Professor Keim there at that time. From Mr. Mims he learned that the contractors' consultant, Professor William H. Rowan of Vanderbilt University was at Oroville and would be available for discussion. The schedule for Friday, as arranged by Mr. Wilber, since he had to be in Sacramento, included first a meeting with Mr. Howard Eastin, his assistant project manager. Professor Keim explained the purpose of his visit as a matter of record only, namely to thoroughly inspect the various construction operations and to discuss with the proper person or persons four principal subjects, as follows:

(1) The whole program of instrumentation of the dam and power house structures, the expected plan for monitoring of the instruments, and the records of the instruments which were in place during the December flood.

(2) Any labor problems which might have a bearing upon completion dates set forth for the various aspects of the project. Especially in view of the strike which was made against the McNamara-Fuller Company who hold the tunnel, powerhouse and penstock excavation contract.

(3) Compaction and consolidation problems with respect to the quality of basic materials, the transport and placing of materials in the zones of the dam, and the compaction methods and results.

(4) Contractor-engineer relationships including progress planning, actual progress, personnel problems, if any, and contractor attitude toward the specifications and the work.

This led to discussion of other related matters which will be mentioned in Appendix A of this report.

It was discovered that the consulting board for the Department of Water Resources had concerned themselves with many of the same subjects. Recently, among other things, they had recommended some changes in the specifications for the gradation of the fill materials in the main dam structure, and for the security of bare rock surfaces in the powerhouse excavation.

It was determined during the March 19–20 visit to the site that there were some fundamental problems with a contractor which involved the department and to some extent the field personnel, which were interfering with the progress of the work. The force and effect of other observations and discussions and studies of the consultants are reflected in the conclusions here following. These general conclusions with respect to the execution of the Oroville Project contracts are:

(1) That there are many small problems relating to contract procedures as there are in the construction of any project. These are being handled well. There is no major problem save one, which is the present lag in the program of the excavation for the powerhouse and related structures for reasons not now clearly defined.

(2) That, in our opinion, the work on the dam is being done well in accordance with the specifications. We believe, however, that a few changes in method of testing would provide a closer control and at the same time lift the morale of the inspectors and laboratory engineers.

(3) That the relationships between the contractor for the dam and the personnel of the Department of Water Resources, both in Sacramento and at the site, are generally within the recognized range of propriety. At the working level each man under Mr. Addison Wilber, the project manager, is capable and understands his position, properly discharges his responsibility with respect to construction inspection, and respects the responsibilities and rights of both the department and the contractors under the specifications.

(4) That there seems to be some basic contractual misunderstanding between the Department of Water Resources management, the field forces, and the McNamara-Fuller Company. This is compounded by the fact that for several reasons, including the strike against this company and certain major design changes, the excavation for the powerhouse and related structures is very much behind schedule. The sixth project manager for McNamara-Fuller arrived on March 10. This number of changes in the contractor's site management is a cause for concern on any project. Nor is it beyond the bounds of possibility that the inspection staff on the powerhouse and tunnels does not have the respect found elsewhere on the project, perhaps because they lack authority to make decisions which will not be reversed by the department.

(5) That labor relations have been well handled by all contractors except by the McNamara-Fuller Company. This may not be entirely the fault of that contractor, since jurisdictional disputes between rival unions, safety of workers in the subterranean galleries, and particular interpretation of sections of the specifications dealing with support of tunnel walls have been and are in question. All of these things may have triggered the strike. The continuing antagonisms between groups of workers, and groups within the workers' group, and the contractor are hard to explain.

(6) Future labor conditions cannot be predicted, but it is well to take note that this year, 1965, is the renegotiation year for contracts between the Construction Labor Unions and the Associated General Contractors of America in California. The anticipated demands to be made by the several unions are high, both in take-home pay considerations and in fringe benefits. The matter of jurisdictional disputes is receiving some attention in congressional considerations of the Taft-Hartley Labor Relations Act. What will be the outcome is uncertain.

(7) That the upstream embankment which was finished to elevation 605 feet above sea level prior to December 1964 behaved satisfactorily during the flood. The saturation levels and movement within the dam structure, as measured by the instruments which had been installed, were as anticipated. With the dropping of the upstream water depth against the dam after the flood, the behavior of the free water levels in the fill materials was satisfactory and as planned.

(8) That the results from the tests of consolidated materials taken from the dam point to the fact of satisfactory placement in accordance with the specifications. The same is indicated by the actual inspection of the methods used in placing and compaction of the specified materials. Since certain studies of changes were recommended by the consulting board in Zone 2 material requirements, the material in the special zone upstream of and below the crest of the concrete core, which was under discussion in February 1964, is now the equal of, if not better than, the Zone 2 material which is being placed above the core block in the higher reaches of the dam section.

(9) That it is difficult, if not impossible, to find fully qualified personnel for the positions in the jobsite organization of the project engineer under the present civil service regulations. Likewise, the California State Employees' Association internal regulations governing the relationship between registered and nonregistered engineers in the same division are causing some problems. There needs to be a frank and open discussion about ways and means to get engineers in sufficient numbers and with experience on dams to round out the site organization for the Oroville project management. It appears that this may have to be extra-civil service.

(10) That there appears to be some overlapping authority and responsibility between the field forces and the Sacramento staff which inhibits positive action in the field. No project can be well managed either by the engineering and inspectional staff or the contractor's manager without a delegated coincidental authority and responsibility at the site of the work.

(This was written by the consultants here concerned prior to the time that we had a conference with Col. Raymond Hill and were accorded the privilege

of seeing the reports of the consulting board for the Oroville Dam. In their November 20, 1964, report the board stated "D. Interpretation of Specifications: The board has observed a tendency for enforcement of the letter of the specifications. The board recommends that the field forces be given more latitude in carrying out the intent of the specifications.")

(11) That strict adherence to the programmed construction on tightest of schedules from now until completion of the interdependent parts of the Oroville project is required if penalties to all concerned are to be avoided. The dam structure contractor is increasing his plant capacity for placing and compacting fill materials. The new project manager for McNamara-Fuller believes that he can regain lost time and meet the completion date. The original schedules set forth by the Department of Water Resources were extremely tight for works of this sort. It is fortunate that these schedules have been maintained as well as they have.

(12) That there must be confrontation between the McNamara-Fuller Company and the Department of Water Resources on the subject of their contract with the idea of settling once and for all upon a fixed design for which the contractor may make a reasonable plan of execution.

(13) That each of the recommendations of the consulting board, be they in regard to general construction processes, safety measures, or whatever to be observed in underground construction works, be implemented at the earliest possible time after they have been made. It is also recommended that the board of consultants be given more inspection time at the site of construction in order to make their deliberations more meaningful and their recommendations more exact, and that they be given authority to make recommendations beyond the answers to specific questions posed by the Department of Water Resources.

(14) That quarterly inspections of the nature herein reported be scheduled and reported as a matter of public record. Likewise it might be a good policy to request that the committee consultants be present as observers at consulting board meetings.

Appended hereto in more detail is the report of specifics which were discussed and observed by a complete inspection of the site, including a walk through the grouting galleries, the inspection tunnel in the concrete core, and into the underground operations of McNamara-Fuller Company. The Thermalito operations, the materials borrow pits, handling and placing devices, bridge construction, and the testing laboratories were also visited and discussed in detail with Mr. Wilber and his assistants.

As you know, there is an engineer in Sacramento who is critical of the design. At your direction Mr. O'Connell met with and interviewed him on March 22. Subsequently, we have discussed the Oroville Dam design with a number of the designers and consultants and, while we have no question of the general adequacy of it, nevertheless, it is our opinion that any engineer who has real questions about the design must be given a hearing by a competent group, such as the designers in the department, the dam safety group, and the consulting board. Real or fancied ideas about the general adequacy or inherent dan-

gers in a public project of this sort from whatever source cannot be cursorily brushed aside if the public is to be satisfied. We recommend that this committee undertake to establish the ground rules and insist that Mr. Guenther and the state groups meet with intention to resolve their differences accordingly.

We have discussed further the matter of earthquake consideration in the dam design (which is one of the most criticized aspects of design), with several engineers. We have in hand also the report of an analysis of the ability of the dam to resist tectonic forces which indicates that the factor of safety in some extreme cases of conservative design may approach unity.

However, "There are several reasons for the apparent lowness of the acceptable factor of safety in earth dam designs, some of which may be mentioned:

"a. The figures used for the strength of earth materials are necessarily taken quite close to the minimum values obtained, and the strength which would be mobilized before disastrous failure could occur would usually be much greater.

"b. Usually the factor of safety increases with the passage of time owing to consolidation, etc., so that a factor of safety which was originally 1.3 may eventually become 2.

"c. In most cases the forces tending to produce movement are taken at the upper possible limit but may actually be materially less than the assumed values.

"The net result is that if the investigation and analysis have been thorough we usually have rather conclusive evidence that the factor of safety determined is the minimum to be expected."—Justin, Hinds, Creager.

The Department of Water Resources is sponsoring a continuing program of research in the mechanics of earthfill dams under earthquake stresses at the University of California at Berkeley. Several progress reports on this subject have been delivered to the department.

It is suggested that we answer committee members' questions and discuss these and certain other related matters further with the committee in executive session at such time as suits their convenience. What is related in this correspondence and attachments is presented for use in whatever manner may be chosen by the committee.

APPENDIX II-a

SUPPLEMENTARY OBSERVATIONS AND TECHNICAL CONSIDERATIONS

Conference at the Oroville Project Office, Inspection of the Construction Operations, and Interviews Subsequent to March 12, 1965

On Friday morning, March 19, 1965, the assistant project engineer at Oroville outlined the organization and made the arrangements for continuing discussion of the project operations with Mr. Fred McCune, the chief civil engineer. At Mr. McCune's office at the damsite, Mr. Jack O'Rourke, a graduate civil engineer, in charge of the installation and monitoring of the instruments, explained the system, followed by a morning-long inspection.

The instruments are installed for three purposes, the first of which is to determine the elevation of the free water (phreatic line) in the several zones of the dam embankment, both upstream and downstream of the central impervious core. For this, protected piezometer tips are used. The second purpose is to determine what internal settlement patterns in the various zones may be developed. This is accomplished by installing a locally designed instrument which measures differential water levels in a special $1\frac{1}{2}''$ pipe placed vertically upon a large metal disc which forms the base reference point for the measurements. Obviously, these measurements have to be made by remote control. Plastic tubes connect the instruments with gauges at accessible locations in the inspection galleries for monitoring. A third purpose for instruments is to determine spread or mass translation of the dam structure by placing pairs of plates in sequential locations, all interconnected with wires which terminate in a structure in the downstream slope of the dam at which point differential movement can be detected.

In addition to the instruments mentioned above, total seepage through the dam can be measured. A cutoff wall, placed some 2 feet below the Zone 5 (downstream drain section) cuts off residual seepage and routes it through a pipe to a gauging weir where it can be measured and observed. Any material that it might be carrying, such as observable silt grains and changes of color in this seepage, would indicate "piping" or other changes in the structure. Although the construction of the measuring weir was not complete, the water from the toe drain was essentially an unmeasurable quantity during the last flood. Piezometer tips placed in the dam structure and in the foundation rock prior to the flood operated continuously and the monitored readings indicated that the free water levels in the materials were as expected.

Upstream of the core block continually increasing levels of water were recorded, whereas, downstream of the core block the levels followed the rise and fall of the water upstream of the dam directly. In the foundation under the core block and just downstream of it some variability in direct proportion to reservoir water level was experienced.

No dam stops all of the water from passing through it or through and around its foundations but the level and character of the flow line through the dam section can be controlled by design. The matter of hydrostatic uplift in a rigid dam is important but a moot question. It is of less importance as such in earthfill dam design, even one incorporating a massive concrete core block.

The settlement devices measured variable small amounts of settlement at the different levels where placed. These amounts were less than may be when the high dam is complete. Some settlement is expected due to the consolidation of the material by reason of the weight superimposed upon it even after it is compacted in place according to the specifications. The mass translation and spread devices placed in the dam were not connected but at the height to which the dam structure is now complete the lack of record is not critical. Such measurements as were observed and interpreted into free water level elevations and the positions of the various instruments are a matter of record and can be obtained for review by persons with specific technical interest.

Of the many earth dams built according to the Proctor System since its inception some 35 years ago, too few have been instrumented so that their action under stress could be determined. There is a chance at Oroville to really assist in getting research data which will be of great value in making future designs. To this end it is suggested that whereas the plan calls for the placing of instruments at several levels along the longitudinal centerline of the dam (i.e., transverse to its major axis) it might be useful to place some piezometer tips on each side nearer the abutments. Also great care should be taken in placing these tips at such places in successive zones in order that the relative effect of each adjacent upstream zone in controlling the internal water levels can be determined. Downstream of Zone 1 and Zone 5 it is especially necessary to place the instruments as close to the line of material change as is possible for accurate recordings. In this there is no implied criticism, since at the current heights of the dam structure the placement is correct, but as the dam increases in height placement of the tips becomes more critical both along the lateral axis and the longitudinal centerline.

Compaction and Consolidation

The control of compaction is the responsibility of the chief civil engineer, but field inspection has been delegated to Mr. Ed Henry, a person of long experience as an inspector in earth dam construction. The afternoon of March 19 was spent with him observing the whole material operation from pit to embankment.

The placing schedule is tight. On the basis of the presently estimated situation, 93,400 cubic yards per day, on the average, will have to be placed to meet the deadline dates. The contractor is making some changes in order to meet these dates, not so much to meet quantity requirements as to make his operation more flexible qualitatively as the extent of the dam section increases with height.

The tests made by the laboratory in charge of Mr. Miller indicate that the necessary percent compaction is being attained by the method now used. However, as time becomes more critical it is possible that

the time and method of compacting and the elevations where the tests are made should be more closely correlated. In short, the density tests of the core (Zone 1 and other zones) should be made at elevations near enough to the working lift so that should extra compaction be needed it is possible to apply it. Thus, only four inches of a compacted lift could be scraped off instead of the one foot being eliminated now, and the test material taken from the 12 inches below that. It would then be practical to correct any irregularities which the tests mav show. It is important to have as near a homogeneous mass as possible. From a technical standpoint a homogeneous mass is stronger than a variable density mass even though the homogeneous structure may have a lower overall density.

Mr. Henry and Professor Keim followed through all the phases including the work at the contact lines between the core fill and the abutments. The consulting board suggested especial care at these lines. The abutments are generally sound but here and there as the fill increases in height loose rock is found and removed and any cracks or hollows are thoroughly grouted. The procedures used were satisfactory.

The material in the filter zones is compacted by specified rolling with given type of machinery. It appears that this specified rolling is giving adequate results. Inspectors must, however, be on the alert to make certain that the materials are bladed to the right lift thickness in such a manner that no rock pockets with insufficient fine material will remain. Mr. Henry and the other inspectors are apprised of the necessity for proper handling of the materials to obtain the maximum of homogeneity in the mass.

At the borrow pits the contractor's system for mining the Zone 1 core material is very ingenious. The plan is to have the scrapers load downhill along a slope which can be varied from time to time as the materials change. He fills the scraper bowl with the right mixture. This core borrow pit was protected from rain by a waterproof membrane of neoprene during the heavy rain season. Thus, it was possible to preserve a correct water content in the material so that after the rains construction was immediately possible. The crux of adequate core (Zone 1) construction is the maintenance of the water content in the material which is peculiar to it as determined by laboratory tests in advance.

The dredge tailings which are used in Zones 2, 3 and 4 are being excavated by dragline and the wheel. As would be expected, these tailings are not at all uniform and care must be exercised by the operators to take advantage of the variations as they appear in order to get a mix that readily satisfies the gradation requirement for the several zones. This does not preclude all necessity for some manipulation at reclaiming centers to keep the material gradation within specification limits. Zone 5 material, which is specified to have a very high permeability factor, requires extra manipulation to accomplish the gradation required for it.

It is understood that the contractor might like to change the type of compaction equipment which was specified by the Department of Water Resources for use on the job. Experiments have been undertaken on the grade which indicate that a change in the equipment would not

only produce compaction rates equivalent or better than have been obtained, but would make the contractor's operation more flexible near the abutments. Consequently his rate of product which cannot drop below 93,400 cubic yards per day would be more certain. If the contractor makes a formal request for this change it should be favorably considered. It should be obvious that machinery which could give the same or better results and at the same time increase the contractor's rate of production is in the interest of the state and should be allowed. As a matter of fact, these consultants would have written specifications by which the contractor could have selected his own equipment in the first place. Many engineers write a specification which requires a given density to be attained by whatever means the contractor may choose. The current specifications allow some leeway in type of compaction equipment, but, by specifying both machinery and method to be used as well as quality of product, the state could by implication be held responsible for the end product if the method did not produce it.

Safety

The Oro-Dam Constructors and the Department of Water Resources are both safety conscious with the result that there have been few accidents among construction personnel on the job or to community personnel where the job operations could affect them, such as train or truck operations and excavation of the source material. There have been some discussions and disagreements about job safety in connection with the excavation of the tunnels and the underground powerhouse which will be mentioned again herein. This has been a subject for recommendation by the consulting board.

Staff Conference

The morning of Saturday, March 20, began with a general discussion of various parts of the construction with Mr. Wilber and his associates; Mr. McCune, chief civil engineer; Mr. Jack O'Rourke, instrumentation engineer; Mr. Miller, testing laboratory engineer; Mr. Oleson, engineer in charge of the underground construction; and several assistants.

The instrument placing program was again thoroughly discussed. The suggestion concerning placing a line of instruments near each abutment was taken under advisement as a suggestion to the design division. The monitoring program and the records of the instrument reading during the December flood were thoroughly discussed. The design group has studied the records and have found no unusual or unexpected happenings, nor were any apparent to us.

The methods of compaction of the dam material were again discussed and the testing program results were explained by Mr. Miller, the testing laboratory director. The state specifications call for a certain number of passes of given equipment over the materials of the various zones, which varies from zone to zone. These passes were determined by constructing prototype test areas prior to the writing of the specifications by which the desired relative compaction was obtained. The laboratory reports on actual density of material as obtained by standard sampling of the compacted material in the dam indicates that

satisfactory densities are being obtained. There is no reason to detail the tests and controls here since they are highly technical, but it can be said that the laboratory personnel are fully competent and are following standard and specified procedures. In fact, Mr. Robert K. Miller has been selected to present these procedures to the Earthwork and Foundations Section of the American Society of Civil Engineers at the convention in St. Louis, Missouri, on June 16, 1965. Mr. B. B. Gordon of the Design and Construction Division, Department of Water Resources, will also appear on this program. Their presentations to that group will be critically examined by us.

While there is no criticism of the results, there are two items of change which would make the inspectional staff happier and could allay certain allegations from outsiders. These are: (1) a change in the compacting equipment for Zone 1 (impervious core) material which the contractor wishes to make and tests have indicated the effectiveness of the suggested equipment; and, (2) the taking of test samples beginning at 4 inches below the finished surface of any layer rather than beginning at 12 inches as is now required by the design division.

As for the place where density samples are taken from the dam structure, the principle here involved is that they should be taken as near the new lifts as possible so that if any extra compacting energy is required it is possible to apply it to the lower lift as the next one is being placed and compacted. This merely gives a greater control on the placement procedure. Immediate control of placement procedures as well as of the gradation limits of the material placed in obtaining the proper homogeneity of the final structure are essential. Homogeneity of the material in the compacted dam structure is the ideal to be obtained. It can only be attained if all sections have minimum variation from the relative compaction desired. Needless to say, many dams constructed by others than the Department of Water Resources have been controlled by the system now used by the department at Oroville, but these consultants prefer the change suggested.

Mr. Oleson gave a running report on excavation of the powerhouse and tunnel contract. His report indicates that all of the troubles so far encountered by McNamara-Fuller may not have ended. Labor conditions and the strike which delayed the work for 79 working days are the principal sources of trouble from the outside. However, there may be some internal company troubles. The sixth project manager for McNamara-Fuller arrived a week before the conference here reported. It appears that no work can proceed apace when management is changed at this rate. It also seems that there may be a company policy which does not grant the project manager the proper authority for the responsibility placed upon him. Nor is this entirely a problem of this contractor since many field organizations suffer from too much "home office" and "design division" interference. Some of the latter may be a factor in the many requests for change orders and extras which have been made of the Department of Water Resources by the McNamara-Fuller Company.

It appears that there is sufficient local help in the Oroville area for underground constructors, but there are jurisdictional disputes among the miners and underground workers and laborers unions. How these

can be resolved is out of the hands of a contractor, but his ability to negotiate with the unions is a factor which can lessen or aggravate the tensions.

Instrumentation of the tunnel and powerhouse excavation was discussed by Mr. Paul Leishman, in charge, who works closely with Mr. Jack O'Rourke. Stress and strain meters have been placed according to plan in the tunnel and powerhouse sections. The stress/strain meters are kept within 2′ of the advancing face, at 20′ on centers. Thus far it has been determined that the whole arch of the powerhouse roof is in compression (which means stability). It is understood, however, that certain measures have been required by the consulting board to insure integrity of local areas.

Wall movement during and following blasting has not exceeded 0.002″ to 0.057″. Later movement in the walls has been up to 0.108″ with an average of 0.050″. Relaxation meters are inset 40′ in the wall sections. There is also subaudible sound monitoring by electronic couplings to determine the possibility of continuous relaxation of the rock. The rate of pips, which are magnified rock movement sounds, is measured. Any increase in the rate (no increase as yet) is important information about stability for which (if any) corrective measures may be taken.

A trip with Mr. Miller through the testing laboratory completed the morning's work. The field testing laboratory at the Oroville damsite is a complete modern laboratory in which the tests are made in a standard acceptable manner by competent engineers.

All in all the Saturday morning, March 20, 1965, conference with Mr. Wilber and his staff was very satisfactory since Professor Keim, as well as the staff members, obtained a more complete picture of the several operations, the present situation, and the required progress for the various construction operations remaining. However, it was apparent that there were areas in which the field forces would be happier and could be more effective were their responsibilities matched by the requisite authority.

The facts are that as of April 1, 1965, the progress of the whole State Water Project construction in and around Oroville is not as good as was anticipated. From this date forward all contractors will have to work on a very tight schedule. The project management has advised the contractors of the average production required. With the exception of McNamara-Fuller, it appears that the time sequences will be met. McNamara-Fuller have had other delays for several reasons since the inspection on which this report is based was made.

Conference With Oro-Dam Constructors

At noon on Saturday, March 20, Mr. Wilber and Professor Keim had a detailed discussion about the earthwork of the major dam structure with Mr. Rodney Mims, the Oro-Dam Constructors, and Consultant Professor William H. Rowan of Vanderbilt University. The modus operandi to meet the deadlines which are tight and critical were the principal topic. While no one can guarantee that the deadlines for fill placement will be met, the Oro-Dam Constructors and their consultant have reasonable plans for so doing. Apparently Mr. Mims and

Mr. Wilber have mutual respect for each other and the problems which can be surmounted only by mutual endeavor.

General Area Inspection

After lunch and before a scheduled inspection of the underground construction being done by McNamara-Fuller, Mr. Wilber and Professor Keim made an inspection of several peripheral but important construction projects. A bridge being built in the dry, which later will span the canal, also serves as a carrier for California Water Service conduits which must be changed before the canal is constructed. This is typical of the need for scheduling every part of the construction and it illustrates the demand for adequate experienced staff to which the responsibility for completion of the several projects can be delegated. In driving from job to job the discussions of needs and problems with Mr. Wilbur gave professor Keim a thorough basis for scheduling periodic inspections by the committee consultants during project construction as was discussed with the Senate subcommittee.

The Underground Construction

At the time of this report the most critical situation so far as construction is concerned is in the underground excavation. There are at least four parts to the problem: (1) Labor problems mentioned before; (2) Relations between the contractor and the Department of Water Resources at management levels; (3) The organization of the contractor's forces; and, (4) The lack of authority of the inspection group to make spot decisions on construction procedure. Nothing can be done about labor directly, but it seems that the contractor does not quite understand the levels at which negotiations and relations with labor must be carried on in the United States.

Something is being done about the allegations of the contractors that the Department of Water Resources has made certain changes which have changed the scope and thereby the scheduled progress of the work. It is understood that a third party (consultant-arbitrator) has been engaged to assist in the arbitration. This is a problem not in the purview of this report, but there is no doubt that the disagreement between the state and the contractor has had a detrimental effect upon the progress of the work. Except for the discussion between Mr. O'Connell and Mr. Guenther and between Professor Keim and Mr. O'Connell and others relating especially to Mr. Guenther's allegations as to the *unsafe design* of the dam, no other direct consideration of design details has been considered or assumed by us.

The organization of the McNamara-Fuller force has obviously been a problem. As mentioned elsewhere, as of March 1st, the sixth project manager arrived on the site. Since then it is reported that new problems have arisen. As a result of an actual inspection of the headings and condition of the excavations it is obvious that the plans for the work have not been and are not now adequate. The spoil from blasting was not cleared away, the underfoot working conditions for the men were unsafe, and ventilation was poor. The contractor wishes to shut down entirely while extensions to the ventilating system are being made, but this was denied by the department personnel. One of the

reasons that muck was not being removed was the lack of air for the proper operation of mucking machines and the protection of manpower from the products of incomplete combustion. The problem as of March 20 could have been expected to get worse. It may have been at this point that subsequent trouble did develop. It was obvious that more ventilation was needed in order that other undesirable and unsafe practices could be eliminated. The actual technique of blasting was good in that straight walls and proper crowning arch lines were obtained.

At this time there appears to be no question that the rock into which the powerhouse is to be built is generally sound. Certain rock bolting and other protection of the base rock is being installed as a security measure as directed by the consulting board.

As mentioned elsewhere an adequate and satisfactory instrumentation system is being installed so that the condition during construction can be checked for safety and that records after completion will be available for use in designs of the future. The planning for installation of instruments in the structures of the Oroville project for research purposes is to be commended.

As to number (4), last above, authority to act should be added to the responsibility for progress and specification interpretation imposed upon the field staff and inspectors on the sites of the work. It is also suggested that the inspectors relay their desires about changes in the workmanship and results through the superintendent of the contractor responsible and not directly to the workmen. In this connection, it is mandatory that the contractor have a man in authority for his operation on the work at *all* times. That this has not been so coupled with the lack of a department engineer with authority to act at the site has been one of the contributing factors to the current problems in the underground work at Oroville.

General Activities

Upon completion of the inspection late in the afternoon of March 20 some notations were made. Senator Pittman was called and given a general summary of the events of the two-day inspection. An early to bed was indicated because of the rigors of the climbing in and around the works. Professor Keim returned to Berkeley on Sunday, March 21.

The two consultants making this report conferred about the overall situation on Monday, March 22, and Mr. O'Connell made a verbal report of findings of Professor Keim's inspection to Senator Nisbet. Likewise Mr. O'Connell had the discussion with Mr. Guenther, the vociferous critic of the design of the dam on that same day.

On Saturday, April 10, the consultants met in Burlingame to discuss the report, the Guenther allegations and the recorded report. Also, a call was made to a civic leader of Marysville who had contacted Senator Nisbet because of her great concern over some of Mr. Guenther's allegations which were made in open meetings he held throughout the area. She was assured that the department, the consulting board, the Senate committee, and the consultants were looking into all aspects of the Oroville project. Since that time contact has been had

with several persons directly connected with the design and construction specifications, members of the consulting board, and other individual engineers in pursuing the information which was needed for the conclusions noted herein.

Specifically on May 4 we and Consultant Raymond Hill had a luncheon discussion covering the activities of the consulting board. We were assured that regardless of the limitations in the written reports, the board was really acting as a true consulting board, but that too little time was allowed for inspections at the site. Premoulded questions were placed before the board for answer rather than discussion of open questions brought forth by inspection.

Since the meeting with Mr. Hill we have received copies of the consulting board's reports since October 19, 1962. From these we have seen that our questions and observations have been on the agenda before the board and that they have been concerned about similar matters.

The Board of Consultants' Report of February 8, 1964, Page 4, confirms this.

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STATE OF CALIFORNIA

JOINT LEGISLATIVE COMMITTEE FOR THE REVISION OF THE PENAL CODE

1967 REPORT

February 1967

Joint Legislative Committee for the Revision of the Penal Code
Project Office: School of Law (Boalt Hall),
University of California, Berkeley

CALIFORNIA LEGISLATURE

Joint Committee for Revision of the Penal Code

Room 2082, State Capitol Sacramento, California

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February, 1967

To His Excellency Ronald Reagan
Governor of California
The Honorable Robert Finch
President of the Senate
The Honorable Jesse M. Unruh
Speaker of the Assembly

The Joint Legislative Committee for the Revision of the Penal Code was authorized by the provisions of Chapter 1797, Statutes of 1963, to study and appraise existing provisions of the penal laws and procedures and related statutes, and to prepare for submission to the Governor and Legislature a revised, simplified body of substantive laws relating to crimes as well as a revised, simplified body of procedural law relating to criminal and quasi-criminal actions and proceedings. Section 4 of the act creating the committee requires that a report be presented to the Governor and to the Legislature in February 1967, presenting its proposals for revision of the substantive and procedure criminal law.

The Joint Committee submits herewith its first report containing the recommendations of the committee concerning the scope and content of criminal law revision in California, a description of the operations of the revision staff and an account of work in progress on the drafting of a substantive code of criminal law.

Respectfully submitted,

Donald L. Grunsky, *Chairman*
Member of the Senate

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THE ORGANIZATION AND OPERATIONS OF THE JOINT COMMITTEE AND THE PENAL CODE REVISION STAFF

The Joint Legislative Committee for the Revision of the Penal Code was established in 1963.[1] It consists of five members of the Senate and five members of the Assembly. The act by which the Committee was created provides that the chairman shall be chosen from one of the Senate members; the vice-chairman from one of the Assembly members. All are required to be lawyers.

Its establishment was the product of a growing consciousness in the legislature and among many groups and individuals of the inadequacies of a code that has never undergone basic, comprehensive revision since its adoption almost a century ago. It is true that the code has been the subject of frequent amendment and that extensive, enlightened changes have been made particularly in its procedural part.[2] As a matter of fact, California criminal procedure has served well as the framework of one of the most advanced systems of criminal justice in the nation. But the new and the old parts often do not fit well together, they have not been the product of a continuing, coordinated effort and, considered together, they do not comprise a coherent or comprehensive statement of either principle or policy.

The responsibilities assigned to the Committee are broad and extensive: "The Committee shall study and appraise existing provisions of the penal laws and procedures and related statutes and shall prepare . . . a revised, simplified body of substantive laws relating to criminal and quasi-criminal actions and proceedings in or connected with the courts, departments and institutions of the State."[3] In addition the Committee has been given specific directives to restate and redefine the substantive criminal law and to consider the advisability of changing the structure of the Penal Code by transferring its procedural provisions to a separate code of criminal procedure.

In order to provide for the administration of the project, to conduct its legal research activities and to perform the task of statutory drafting, the Committee was authorized to appoint a Project Director and a staff of consultants, technicians and draftsmen. An Advisory Board was created and provision was made for the cooperation and assistance of the Legislative Counsel and the Law Revision Commission.

The first meeting of the Joint Committee was held in San Francisco in September, 1963. In the course of a session extending over two days,

[1] Ch. 1797, Stats. of 1963.

[2] The recommendations of the Commission for the Reform of Criminal Procedure which were enacted by the legislature in 1927 placed California in the forefront of the movement to free criminal procedure from the cumbersome common law technicalities which have survived from the common law of England. See Report of the Commission for the Reform of Criminal Procedure to the Legislature (Stats. of 1925, p. 622), (1927). In 1951 criminal law procedure in the inferior courts was simplified and brought into conformity with procedure in the superior courts when the legislature adopted the draft proposals of Judge Harley Shaw of Los Angeles Superior Court.

[3] Ch. 1797, Stats. of 1963, § 2.
Id. § 2(5).

the Committee heard the views of almost forty distinguished members of bench and bar, law enforcement officials, civic leaders and others on the topic of criminal law revision.[4] Many widely differing suggestions were made concerning specific provisions and aspects of the criminal law of California where need for reform was required but there was almost complete unanimity of opinion that comprehensive revision of the Penal Code was not only desirable but necessary.

During the remainder of 1963 and through the spring of 1964, the Committee gave its principal attention to the structure of the project staff, sought further counsel from advisors and began a collection of materials and publications produced by penal law revision agencies in other jurisdictions. These were useful and adequate in disclosing the form and content of both completed and on-going revision proposals in Wisconsin, Kentucky and Illinois, but it proved impossible to secure information concerning the administrative and operational structures and procedures which might serve as prototypes for the Committee's staff or which would be helpful in fiscal planning. To supply this need, conferences were held with the chief reporter of the Model Penal Code project of the American Law Institute, with the chief counsel for the New York commission on criminal law revision, with members of the staff of the Louisiana Law Institute, the Illinois law revision project, the Wisconsin criminal law revision project and the director of the Minnesota criminal code revision project.

A report describing the administration of these projects was prepared for the Joint Legislative Committee together with a series of recommendations for the operation and administration of the revision staff which were the result of study and review of the budgeting, personnel and administrative practices and procedures of criminal law revision in other jurisdictions. These and other recommendations for carrying out the responsibilities of the Joint Committee were submitted by the Project Director for the Committee's consideration at a meeting held in Santa Monica in September, 1964. The agenda acted upon included the following:

1. A request by the Project Director that authorization be given for the recruitment of a staff of principal researchers and draftsmen to be known as *Reporters* and for other experts as might be needed in specialized fields to be known as *Consultants.*

2. A recommendation that in addition to the Advisory Board (established by the statute authorizing the Penal Code revision project) a Citizens' Advisory Committee should be appointed consisting of two sections; one in Northern California, one in Southern California.

3. A recommendation that the project commence with the drafting of a substantive code of criminal law and continue thereafter with the drafting of a code of criminal procedure and a corrections code.

4. Consideration of a tentative plan or topical outline of a code of criminal law. (See Appendix I.)

[4] Proceedings of the Joint Legislative Committee for the Revision of the Penal Code, San Francisco, Sept. 24–25, 1963.

All of the agenda items received the approval of the Joint Committee, efforts to recruit the revision staff were soon instituted and on October 10, 1964, the first meeting of Reporters and Consultants was held at Berkeley.

STAFF FUNCTIONS

Through 1966, the revision staff consisted of a Project Director, four Reporters, two Consultants and a Secretary. From time to time research assistants are employed under the direction of individual Reporters or Consultants for basic research in assigned areas of study. Each of the Reporters and the Project Director are members of law school faculties at the University of California in Berkeley and Los Angeles and at Stanford University. One of the Consultants is a member of the faculty of the University of Southern California; the other of the University of California at Berkeley. All of the universities with which the staff members are affiliated have made supporting contributions to the project by providing office space (including the headquarters' office in the School of Law, University of California, Berkeley),[5] research assistance, law librarian assistance and secretarial help. Without this support, the costs of the project would be enhanced substantially.

The second meeting of the revision staff was held at Berkeley on December 19, 1964. At this time, operational plans were completed and individual assignments of topics, selected from the tentative plan, were made to the Reporters and to the Project Director. It was the consensus of the staff that work on a corrections code could be commenced concurrently with the drafting of a code of criminal law and it was decided to assign this part of the work in its entirety to Consultants to be selected for their competence and experience in the correctional field. By March of 1965 these appointments were made. Several preliminary memoranda were drafted as a basis for designing a plan for a corrections code but this work was interrupted in September, 1965, when the principal Consultant was appointed to the staff of the President's Commission on Law Enforcement and the Administration of Justice. Upon the completion of this assignment in February, 1967, this Consultant will return to the staff and work on the corrections code will be resumed.

Individual Reporters and Consultants, after having received topic assignments, prepare and distribute a preliminary memorandum which outlines and digests existing law, compares California law with the provisions of the American Law Institute's Model Penal Code [6] and the revised law of other jurisdictions, particularly the revisions which have been completed in Wisconsin,[7] Illinois [8] and New York.[9] The problems which are disclosed by the preliminary memoranda are discussed thereafter in staff meetings which are scheduled at intervals of from three to four weeks apart for sessions of from one to two days. The Reporter concerned will next present a proposed tentative draft with

[5] Enlarged office space has been allocated for the use of the project staff in the Earl Warren Legal Center which will be occupied upon completion of construction in the fall of 1967. The Center adjoins the School of Law (Boalt Hall) at Berkeley.
[6] American Law Institute, Model Penal Code, Proposed Official Draft, as adopted May 1962.
[7] Criminal Code, Title XLV, Wisc. Stats. Ann. 1956.
[8] Criminal Code of 1961, Ill. Rev. Stats.
[9] N.Y. Rev. Penal Law 1965, eff. Sept. 1, 1967.

a commentary which is designed to accompany the draft statute when it is printed in final form. Usually such drafts require resubmission and further staff consideration; ultimately staff work is completed and the proposed tentative draft and commentary is cleared for submission to the Advisory Board and for circulation to the members of the Citizens' Advisory Committee and others who are interested in criminal law reform. The first series of proposed tentative drafts so published was completed in April, 1966, and a second in November, 1966.

In the course of preparing drafts, the staff supplements its own research activities by calling upon administrators and practitioners in the field of criminal justice for advice, information and recommendations. Conferences have been held with administrative and research staff members of the Department of Corrections, visits have been made to the Medical Facility of the Department of Corrections at Vacaville and to the State Hospital at Atascadero, a conference was held with prosecuting attorneys and defense counsel for a discussion of procedures for receiving the guilty plea and numerous questionnaires have been addressed to district attorneys, defense counsel and other informed sources for the purpose of eliciting information about matters of practice as well as comment on proposed drafts. All of this has been an invaluable contribution to the work of the staff.

THE ADVISORY BOARD

The enabling act by which the project was created directed the appointment of an Advisory Board whose membership is prescribed by the statute. It consists of nine members: the Project Director, a representative of the Attorney General, two district attorneys, two lawyers engaged in the practice of criminal law, a member of the California State Bar who is engaged in the teaching of law and two judges selected by the Judicial Council. The members of the Board serve without compensation.

The appointment of the Advisory Board was completed in the fall of 1965 and its first meeting with the revision staff took place at the office of the Attorney General in San Francisco on November 27 of that year. In part, this meeting was held for the purpose of acquainting the members of the Board with the history and development of the project and with the procedures and functions of the staff. Of highest importance, however, was the definition of the relationship of the Board to the staff and the establishment of procedures to secure the effective participation of the Board in the task of revising the criminal law.

It was agreed that as proposed tentative drafts are completed they would be presented to the Board for examination, discussion and review. Whatever amendment and redrafting that may be required by this process will then be incorporated in a second publication for consideration by the Citizens' Committee and for distribution to interested persons.

The first review meeting of the Board and the staff was held at San Francisco International Airport on June 4, 1966. The presentation and discussion of the first series of proposed tentative drafts at that meeting resulted in many useful criticisms and suggestions and demonstrated

the value of the Board's participation in the process of revision. The second series of proposed tentative drafts was presented to the Board on November 5, 1966.

It is contemplated that these two series of tentative drafts, incorporating changes and amendments suggested by Advisory Board review, will be combined in a single publication and be ready for distribution early in 1967.

THE CITIZENS' ADVISORY COMMITTEE

The Citizens' Advisory Committee is composed of members of the bench and bar, law enforcement officials and administrators, educators, physicians, clergymen, representatives of business and labor and other individuals having interest in the administration of criminal justice who have volunteered their services for the project. Its membership is designed to be broadly representative of the community in order that it may serve as a means of bringing to the project the opinions, suggestions and criticism of informed persons in all walks of life.

The Advisory Committee will be organized in two sections, one in Northern California, the other in the South.[10] Initially, its function will be to review and comment upon proposed tentative drafts after their submission to the Advisory Board. Thereafter, when the drafting approaches its final stages and the work of revision can be viewed as a whole, the members of the Advisory Committee will be invited to participate in meetings with members of the Joint Legislative Committee, the Advisory Board and the revision staff for final consideration of the product of the project before its submission to the Joint Committee. It is hoped that these procedures will result in thorough-going discussion and understanding of the completed work before its submission to the legislature.

[10] At the time of the writing of this report appointments of the members of the Northern Section were nearing completion. The selection of the membership of the Southern Section is in progress.

THE SEPARATION OF THE SUBSTANTIVE CRIMINAL LAW FROM CRIMINAL PROCEDURE AND THE LAW OF CORRECTIONS

The specific charge to the Joint Legislative Committee includes separate consideration of the substantive criminal law and the laws governing criminal procedure. Section 2 of the act authorizing the revision project provides:

> ". . . the (Joint Legislative) commitee shall:
>
> (1) Appraise and, as necessary or desirable, restate and redefine substantive provisions of law relating to crimes;
>
> (2) Eliminate existing substantive provisions of law which are no longer useful or necessary;
>
> (3) Rearrange and regroup substantive provisions of law in an orderly and logical grouping of subject matter;
>
> (4) Appraise, simplify, and improve present procedures; and
>
> (5) Consider the advisability of drafting and enactment of, and, if deemed advisable, draft a code of criminal procedure to embody existing and proposed procedures governing the disposition of criminal and quasi-criminal actions."

As a practical matter, any comprehensive revision of the criminal law should commence with its substantive provisions simply because so much of the substantive law has a direct bearing upon the structure of procedure. The classification of crimes in a criminal law code, for example bears directly upon the requirements for arrest and search, jurisdiction of the trial court and the disposition of convicted offenders; the effect of the law's definitions of responsibility for criminal conduct require the development of specialized means for the determination of issues (as in the defense of insanity)[11] or specialized institutions to deal with conduct apart from the criminal courts (the juvenile court);[12] the substantive offense may affect the right to bail (capital cases, intoxication)[13] or eligibility for probation; it may require special rules of pleading (charging prior offenses or, in conspiracy cases, overt acts); crimes may have varying statutes of limitation; the bar against double punishment[14] requires procedural implementation that is directly dependent upon definitions of substantive offenses. Other examples may be cited, but the foregoing make it evident that the drafting of a substantive code of criminal law is the most desirable point of beginning. This has been the order of procedure followed in all other jurisdictions which have completed comprehensive revisions of their criminal laws.

[11] Cal. Pen. Code §§ 1026, 1026a, 1027.
[12] Rev. Juv. Court Law 1961, Cal. Welfare & Inst'ns Code § 500 et seq.
[13] Arrested person (intoxicated motorist) not eligible for bail where public safety involved. Evans v. Municipal Court, 207 Cal. App. 2d 633, 24 Cal. Rept. 633 (1962).
[14] Cal. Pen. Code § 654.

The considerations which indicate the desirability of deferring procedural revision until the completion of a revised substantive code do not apply to the proposal for the drafting of a corrections code. It appears to be perfectly feasible to undertake this part of the project concurrently with substantive law revision, and staff operations were planned accordingly. After several months of preliminary planning and research, however, the principal Consultant in charge of revision of the law of corrections was "drafted" by the director of the President's Commission on Law enforcement and the Administration of Justice for a tour of duty with the Commission which will terminate in February, 1967. It is expected that work on the corrections code will be resumed during that month. This interruption of about a year's duration was disappointing but no qualified replacement for this important member of the staff was available and the project will profit ultimately through his professional experience in a nation-wide study of correctional problems.

The decision to draft a separate corrections code was made during the initial planning stages of the project; it is not specifically mentioned in the act authorizing the project but it is consistent with the general directive having to do with a study of criminal procedure and procedures governing the disposition of quasi-criminal actions. Part 3 of the present Penal Code consists of nine titles which contain the principal statutes governing the establishment and administration of California's correctional system and the disposition of offenders sentenced to the custody of the Department of Corrections and to imprisonment in county jails. These cover more than two hundred pages of West's Unannotated Penal Code. The provisions of the Youth Authority Act are not included in the Penal Code.[15]

Title 5 of Part 3 of the Penal Code lists about twenty crimes, almost all felonies, which relate to prisons and prisoners. Otherwise, Part 3 is filled with detailed authorizations for the establishment of a variety of types of prisons, "institutions," and "facilities"; with detailed personnel regulations; and with a complex variety of administrative regulations for the care, sentence and parole of prisoners, for the operation of county jails, farms and camps and for the conduct of prison industries. This is important legislation. It consists of a body of law and regulation vital to the security of society on the one hand, and, on the other, the expression of California's long endeavor to find ways to change the criminal into a person who can be restored to a useful and productive place in the social order.

The prevention of crime and treatment of the offender, which are the twin concerns of corrections, are a necessary adjunct to the criminal law and to its administration but the statutory framework by which a correctional system is defined and within which it is administered does not lend itself to ready inclusion in a code of criminal law. It looks in different directions, it is based on different assumptions and it is not primarily relevant to the principal tasks and responsibilities of law enforcement personnel, the criminal courts' bar, or the adjudication and review of cases. For these reasons, the rearrangement and regrouping of all the laws relating to corrections, to prisons and prisoners

[15] These were transferred to the Cal. Welfare & Inst'ns Code in 1944 (Ch. 1, Div. 2.5).

and to release procedures in a separate code of corrections should be one of the objectives of the revision project.

There are deeper and more fundamental problems involved, of course, than those of orderly arrangement and logical pattern. Questions arise about the proper function of the traditional county jail system and the relationship which it should bear as an institution to the other institutions in the system of criminal justice. Ordinarily considered as a place for the short term confinement of misdemeanants, in some jurisdictions it may receive felons, in others it serves as a kind of half-way house for offenders whose outright release is considered undesirable and in others it may be a major rehabilitation center as well equipped as many state institutions to receive long term offenders.

County jails and other local custodial institutions exist in California in a variety of patterns that have evolved from the impact of population pressures upon the traditional stone and steel bar structure that still remains in the smaller counties of the state. Except for pre-trial detention centers, the larger urban areas have moved from institutions capable for use only as places of imprisonment to farm type, medium or minimum security installations well adapted to the use of modern correctional techniques and procedures. By and large, however, development in this direction has been uneven, there are many inadequacies in the system and the statutory framework governing the administration of county jails, farms, camps and industrial training centers is sketchy and out of date. There has been almost no development, for example, of local parole systems. This is doubtless the result of limited resources rather than lack of interest, but in any re-examination of the criminal law it should be short-sighted not to take the opportunity to review corrections at the local level in order to appraise its operations and to determine the wisest means for making local efforts in this area effective and efficient.

THE RECOMMENDATION FOR A RESTATEMENT AND REVISION OF THE SUBSTANTIVE CRIMINAL LAW

". . . the committee shall: (1) Appraise and, as necessary or or desirable, restate and redefine substantive provisions of law relating to crimes . . ." [16]

The most fundamental and far-reaching decision of the Joint Committee at its meeting in Santa Monica in September, 1964, was contained in its authorization for the drafting of a substantive code of criminal law. Enacted almost a century ago, the substantive part of the California Penal Code has never undergone comprehensive re-examination and revision. To be sure, portions of it have been the subject of frequent amendment and addition but the retention of many obsolescent and incompatible provisions have led to a body of criminal law that has become increasingly difficult to apply and which lacks the coherence that is essential to the administration of a modern system of criminal justice. Examples of its inadequacies are to be found in the imprecision of its language, in its failure to deal comprehensively and lucidly with the general principles of the criminal

[16] Ch. 1797, Stats. of 1963.

law and in its disorganized and unsystematic arrangement of a bewildering variety of specific offenses.

The language of the law is a product of a long evolution but the process is one that has tended to retain old, historical terminology even though the words used have acquired specialized meanings that may be far more understandably expressed in simple, contemporary English. In the law of homicide, for example, the Penal Code defines murder in the same words that were used by Sir Edward Coke in the 17th Century.[17] Although even at that time the traditional phrase "malice aforethought" embraced unintended killings, this knowledge comes as news to today's jurors who are solemnly instructed that a killing, even though unintentional, may be murder "when the circumstances attending the killing show an abandoned and malignant heart." If the concept of malice aforethought presents difficulties to juries, this is reason enough to revise the law. But problems of understanding what it means exist even for those who are experts in the law.

> "The courts and writers are in agreement on the impossibility of giving the term a definitive and precise meaning. (See *People v. Miceli* (1951) 101 C.A. 2d 643, 650, 226 P. 2d 14 ['No simple definition of malice aforethought has ever been formed, so far as we are aware']; *People v. Holt* (1944) 25 C. 2d 59, 83, 153 P.2d 21 ['The cognizable and practical differences between murder of the first degree and that of the second degree are difficult to delineate because in all the legal history of California that of the second degree appears never to have been the subject of an authoritative definition that is fully conceptual and substantive']; *People v. Gorshen* (1959) 51 C. 2d 716, 730, 336 P.2d 492, footnote 11 ['We need not now undertake the task of formulating an inclusive or comprehensive definition of the malice aforethought which distinguishes murder from manslaughter. The difficulty of such task has been often pointed out']; 9 So. Cal. L. Rev. 112; 49 Cal. L. Rev. 254; Perkins, p. 30; Clark and Marshall, p. 567; 1 Wharton 522; Moreland, pp. 9, 13, 196.)" [18]

Analysis of what the courts have said about the nature of malice aforethought makes it clear that the state of mind sought to be described falls within the definition of "recklessness," a word that has contemporary meaning far more comprehensible than the medievalism's of the common law. Moreover, some of the decisional law, in wrestling with explanations of "implied malice," have used "recklessness" as an effective means of clarifying the meaning of the law.[19]

Another example of the use of words that lack clear, contemporary meaning is found in three sections of the Penal Code that deal with capacity to commit crime. Each of these identify "idiots" and "lunatics" as persons who may not be held criminally liable.[20] Ever

[17] ". . . when a person of sound memory and discretion, unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought, either express or implied." 3 Inst. 47.
[18] 1 Witkin, California Crime, p. 290.
[19] People v. Doyell, 48 Cal. 85 (1874); People v. Hubbard, 64 Cal. App. 27, 222 Pac. 315 (1923); People v. Curry, 192 Cal. App. 2d 664, 13 Cal. Rptr. 996 (1961).
[20] Cal. Pen. Code §§ 21, 26, 31.

since their enactment in 1872, no decision of a court has been found in which an attempt has been made to define or to distinguish between these classes of individuals. In point of fact, they have no medical significance and exist in the vocabulary as terms of derision. Nonetheless, since they are a "fair embodiment of the law," [21] they are still used in standard jury instructions.[22]

Other sections of the code are relatively free from difficulties attributable to the use of obsolescent language, but frequent amendment, endeavors to compromise inconsistent policies and other causes not so plainly discernible have led to enactments that defy understanding. Undoubtedly, the most extreme example of intricate, involved and prolix draftsmanship in this category is the basic statute governing eligibility for probation.[23] Its fourth paragraph, which purports to exclude certain convicted offenders from probationary disposition consists of about five hundred words included within a single sentence. A critical analysis of the statute published in 1962 [24] pointed out that this section, as it then appeared, prohibited granting of probation to convicted offenders who were made eligible for probation by the preceding paragraph in "unusual" cases. In 1965 the inconsistency was resolved by applying the unusual case exception to both paragraphs except that for the offenses enumerated in the latter, the concurrence of the district attorney is required. In short, two inconsistent categories of offenders have been made compatible by the invention of two categories of "unusual" cases.

There are other parts of the Penal Code that can be singled out for their internal inconsistency, overlapping and unnecessary fragmentation of what is essentially a single kind of unlawful conduct into a number of separate offenses. A number of examples can be found in Chapters 5, 6 and 8 of Title XIII (Crimes Against Property) which consist of almost sixty separate sections dealing with theft. Illustrative of the resulting confusion is the existence of two sections dealing with the unlawful taking of an automobile. The first, Section 487, defines the theft of an automobile in common law larcency terms; the second, Section 499b, extends the reach of the first to unlawful taking for temporary use (commonly referred to as the "joyriding" statute). This classification might be defensible if it were not for the existence of a third statute in the Vehicle Code which makes it an offense to take a vehicle unlawfully with intent either to deprive the owner of his possession permanently or temporarily.[25] As the Supreme Court commented in *People v. Thomas:* [26]

> "It is to be noted that the physical conduct prohibited by the three enactments is substantially the same, but that there purports to be a distinction as to the intent with which the act is done in each instance. . . . The distinction between the foregoing offenses is admittedly a subtle one, and would present a

[21] People v. Horowitz, 70 Cal. App. 2d 675, 702, 161 P. 2d 833 (1945).
[22] "The intent with which an act is done is manifested by the circumstances attending the act, the manner in which it is done, the means used, and the sound mind and discretion of the person committing the act. All persons are of sound mind who are either neither idiots nor lunatics nor affected with insanity." CALJIC 73.
[23] Cal. Pen. Code § 1203.
[24] 50 Calif. L. Rev. 651.
[25] Calif. Veh. Code § 10851.
[26] 53 Cal. 2d 121, 125, 23 Cal. Rptr. 161 (1962).

rather difficult problem if it were required that a court instruct a jury as to the distinction in a given situation."

In addition to this brief sampling of some of the internal inconsistencies and obscurities of the Penal Code, there is a considerable body of duplicating and inconsistent criminal law in the rest of California's impressive array of codes. There are at least twenty-three of these, many of which define felonies and all of which contain a bewildering collection of misdemeanors that appear to have been enacted as if each code were a self-sufficient body of law existing independently of any other.

Some examples follow which illustrate the desirability of revising the criminal law and bringing it into coherent order. The Agricultural Code, the Business and Professions Code, the Elections Code, the Financial Code, the Fish and Game Code, the Government Code, the Harbors and Navigation Code, the Health and Safety Code, the Public Resources Code, the Revenue and Taxation Code, the Water Code and the Welfare and Institutions Code, all have their own perjury or false statement provisions which are either unnecessary, in conflict with or modifications of Penal Code Section 118. Although the crime of conspiracy to commit a misdemeanor is made punishable generally in the Penal Code as a felony,[27] it is only a misdemeanor to conspire to violate the provisions of the Business and Professions Code; [28] on the other hand, the conspiracy to violate the penal provisions of the Military and Veterans Code is a crime even though no overt act is committed.[29] There is a general provision in the Penal Code which makes it either a misdemeanor or a felony to resist a public officer by any threat or violence.[30] To resist an officer of the Department of Agriculture, however, even by physically attacking him, is a misdemeanor although without the alternative of a fine.[31] All of the codes proliferate with specific provisions against particular kinds of frauds and false statements, ranging from practicing dentistry under an assumed name or the making of a false statement by a foreign banking corporation to making a false report by an employee of the Highway Department to his superiors.

Obviously the existence of duplication and overlap in the law on such a large scale creates unnecessary obstacles for law enforcement and creates difficult problems of choice in selecting the proper mode for prosecution. There are several reported cases illustrative of the belated discovery of a particular statute existing outside of the Penal Code which compelled the reversal of convictions brought under general Penal Code provisions.[32]

Above and beyond the resolution of the conflicts and incongruities which exist in the definitions of specific offenses, there are a number of fundamental areas of the criminal law which have long required legislative reconsideration.[33] Of these, one of the most important is the way in which the law disposes of the convicted offender. The California statutes

[27] Cal. Pen. Code § 182.
[28] Cal. Bus. & Prof. Code § 125.
[29] Cal. Military and Vet. Code § 1674.
[30] Cal. Pen. Code § 69.
[31] Cal. Agr. Code § 705.
[32] People v. Silk, 138 Cal. App. 2d 899, 4 Cal. Rptr. 669 (1955); In Re Joiner, 180 Cal. App. 2d 250, 4 Cal. Rptr. 667 (1960). See also People v. Samuel, __ Cal. App. 2d __, 53 Cal. Rptr. 887 (1966).
[33] See Packer, The Case for Revision of the Penal Code, 13 Stan. L. Rev. 252 (1961).

which deal with sentencing are more than eighty in number and they constitute what has been aptly termed ". . . the most elaborate, and perhaps the most disorganized, in any American jurisdiction." [34] The commitment to the indeterminate sentence law, which was made almost fifty years ago, was instrumental in breaking new ground in developing a system that has proved to be fundamentally sound in both theory and practice. During the intervening years, however, the accretion of new statutes and the development of modern correctional techniques and changes in the general pattern of crime have made its structure extraordinarily complex and difficult to administer. The result has been a proliferation of litigation of questions that should easily fit into the ordinary routine of administrative procedures.[35]

Problems of disparity in the treatment of convicted defendants are far less under California's indeterminate sentence law than in other systems but disparity nonetheless exists because of the distribution of authority between prosecutors, judges and sentencing agencies and because of the choices which may be exercised by all the participants. Whether a district attorney charges or does not charge a prior conviction, whether a judge does or does not admit to probation, whether a judge does or does not sentence to the county jail and, ultimately, whether a paroling agency does or does not release on parole are some of the more obvious situations in which the exercise of discretion is fraught with the danger of inequitable choices. The matter is aggravated by the lack of established standards and the absence of clear definition of the objectives or reasons for the application for any particular sanction. Even such intangible and indefinable consideration as of local attitudes and local correctional resources, may determine the choice between probation or sentence to the Board of Corrections. It is almost a matter of common knowledge that for many offenders the most important factor is not what kind of crimes they committed nor what may be their individual characteristics, but rather the county in which the offense occurred.

One final example of an outstanding problem in the law of sentencing that cannot be overlooked arises out of the law which purports to prohibit multiple punishment for a single act or omission.[36] There are frequent situations in which criminal conduct includes a series of acts, each of which standing along falls within the definition of a particular crime. Whether each of these may be regarded, however, as separate crimes separately punishable depends upon the rule announced by the Supreme Court in *Neal v. State:* [37]

> "Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of Section 654 depends on the intent and objective of the actor. If all of the offenses were incident to one objective, the defendant may be punished for any one of such offenses but not for more than one."

Neal had thrown gasoline into the bedroom of Mr. and Mrs. Raymond in an attempt to kill them. Sentenced to the state prison on one count

[34] 13 Stan. L. Rev. 340 (1961).
[35] Cal. Pen. Code § 3024, for example, prescribes minimum terms for offenders whose sentences have been aggravated because of the possession of deadly weapons. There are some seventy or more reported cases interpreting this single section.
[36] Cal. Pen. Code § 654.
[37] 55 Cal. 2d 11, 9 Cal. Rptr. 607 (1961).

of arson and two counts of attempted murder, Neal sought a writ of habeas corpus. The Supreme Court overturned the arson conviction because "the arson was merely incidental to the primary objective of killing Mr. and Mrs. Raymond."[38] The court allowed both attempted murder and convictions to stand, however, saying that Section 654 does not apply to one act having two results each of which is an act of violence against a separate person. The intent and objective test has been consistently followed since the *Neal* decision. That test prevents sentencing a larcenous burglar for both burglary and theft.[39] It has been used to disallow punishment for kidnapping for the purpose of robbery when a robbery sentence was also imposed,[40] and to disapprove sentences for both burglary and assault when the "assault was merely incidental to but one objective, to burglarize Mr. Duncan's premises and to avoid being apprehended by the law."[41]

The *Neal* test poses grave problems for both prosecutors and judges because of continued uncertainty about its application. A further question is whether its application, however predictable it may be or become, bears any rational relationship to the purposes of aggravated punishment in the only situations in which it makes a practical difference: concurrent sentences with different maxima and consecutive sentences.

The foregoing does not exhaust the list of examples which point to the great desirability for re-examining and restating the substantive criminal law of California. All of its sections deserve examination in the light of contemporary circumstances and conditions; outdated and no longer serviceable provisions should be eliminated, and internal as well as external conflicts and incongruities should be eliminated. It is important also to identify with more precision the harm against which our criminal statutes are designed to protect the safety and well-being of the community. Clear definition of the purpose of the law will point out ways in which it should be redrafted so that it will serve society's needs in a coherent and rational manner. Principles of culpability as well as principles by which exemption from liability require re-examination in order that the law will not bear too harshly upon relatively minor wrong-doing and at the same time deal more severely and more effectively with major criminality or even with conduct which is not now touched by the criminal code.

This is a large task but it is one in which the work of the revision staff is well advanced in both research and drafting. Subjects of proposed tentative drafts which have been reviewed by the Advisory Board include the following:

Culpability Provisions
Criminal Liability of Children
Criminal Liability for the Conduct of Another
Entrapment
Kidnapping and Related Offenses

[38] *Id.* p. 20 (1961).
[39] People v. McFarland, 58 Cal. 2d 748, 26 Cal. Rptr. 473 (1962); People v. Jaramillo, 208 Cal. App. 2d 620, 25 Cal. Rptr. 403 (1962).
[40] People v. Velarde, 201 Cal. App. 2d 231, 19 Cal. Rptr. 832 (1962).
[41] People v. Niles, 227 Cal. App. 2d 749, 39 Cal. Rptr. 11 (1964). See also People v. Houston, 219 Cal. App. 2d 187, 33 Cal. Rptr. 26 (1963); People v. Houghton, 212 Cal. App. 2d 864, 28 Cal. Rptr. 351 (1963).

Arson and Related Offenses
Defamation
Criminal Liability of Corporations and Unincorporated Associations
Intoxication
Duress; Compulsion
Homicide
Sexual Offenses

Most of these require editorial re-drafting, a few require further study and consideration and several need supplementary drafting of alternative proposals. A good part of this work has been completed and publication of all of the drafts listed above should be feasible at an early date.

Staff work on the preparation of proposed tentative drafts is nearing completion on the following subjects:

Classification of Offenses and Degrees of Felonies
Sentencing
Mistake; Ignorance
Mental Illness, Disease or Defect
Immunity
Double Jeopardy
Conspiracy
Crimes Against State Sovereignty
Interference with Law Enforcement; Obstruction of Public Servants
Assault and Related Offenses
Bigamy; Incest
Causation

These, and others, will be ready for Advisory Board consideration soon with publication to follow later in 1967. All other subjects listed in the tentative plan have been assigned and work is in progress on most. These include:

Double Punishment; Previous Conviction or Acquittal
General Principles of Justification
Bribery; Perjury
Recording Forged Instrument; Falsifying Evidence and Other Crimes Against the Administration of Government
Abortion
Obscenity
Prostitution
Abandonment and Neglect of Dependents
Gambling
Crimes Against Public Health and Safety
Crimes Against Public Order
Trepass
Misappropriation

RECOMMENDATIONS

The Joint Legislative Committee for the Revision of the Penal Code recommends:

1. That it be authorized to continue the revision of the substantive criminal law of California.

2. That it be authorized to complete the drafting of a corrections code.

3. That its decision to defer the drafting of a code of criminal procedure until the completion of proposed code of criminal law be approved.

APPENDIX I

CALIFORNIA LEGISLATURE
JOINT COMMITTEE FOR THE REVISION OF THE PENAL CODE

TENTATIVE PLAN FOR REVISION OF THE PENAL CODE
(2nd Revision—August 1966)

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TENTATIVE PLAN FOR REVISION OF THE PENAL CODE

(Note: Based in part on structure of existing code modified to achieve more logical organization and classification. The sections within divisions and chapters are not complete, but are illustrative only. (2nd Rev.—August 1966.))

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JOINT LEGISLATIVE COMMITTEE FOR REVISION OF THE PENAL CODE

Tentative Draft No. 1

SUBJECTS COVERED:

Division 4. General Principles of Liability

Division 5. Exemptions and Defenses

Division 10. Crimes Against Life and Security of Person

Division 11. Crimes Against Sexual Morality, Public Decency, and the Family

Division 15. Crimes Against Property

Memorandum on Defamation

September 1967

Joint Legislative Committee for the Revision of the Penal Code
Project Office: School of Law (Boalt Hall),
University of California, Berkeley

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INTRODUCTION

This publication is a preliminary report prepared by the research and drafting staff of the Penal Code Revision Project for submission to the Joint Legislative Committee for Revision of the Penal Code. The recomemndations which it contains are tentative and subject to modification. They have not been acted upon by the Joint Committee and their publication does not imply endorsement or approval of any of its members.

The purpose of publication in tentative form at this time is to acquaint the public and those concerned in the administration of criminal justice with the work of criminal law revision in California. The project was authorized during the 1963 general session of the legislature.* The Joint Committee was established at that time and charged with the duty of making a comprehensive and thoroughgoing study of California's criminal law and criminal procedure. After a survey of similar projects elsewhere in the United States, the Committee recruited its revision staff in 1964 and directed it to prepare recommendations in accord with the Committee's general charge to revise and simplify the criminal law of California.

The work of revision is now well under way. It has as its objective the formulation of a code of criminal law, a code of criminal procedure and a corrections code. The drafts contained in this report are indicative of the general style and approach of the revision staff in the substantive criminal law area. Work is going forward concurrently on a corrections code; the draft of a procedural code will await their completion.

At this writing, the first tentative draft on sentencing has been completed but has not as yet been reviewed by the project's statutory Advisory Board. For better understanding of the grading of offenses defined in Tentative Draft No. 1, however, the sentencing plan contemplates that felonies will be graded in three degrees tentatively arranged in the following scheme: **

a. Felonies of the first degree (with a maximum term of imprisonment for life).
b. Felonies of the second degree (with a maximum term of ten years).
c. Felonies of the third degree (with a maximum term of five years).

Lesser offenses will be divided into misdemeanors, petty misdemeanors and (for purely regulatory laws) infractions. The latter will not be criminal offenses and will be punishable only by fine or other appropriate non-criminal penalty.

In addition, the sentencing plan will provide for "extended terms" in cases of felonies committed by individuals whose conduct indicates

* Chap. 1797, Stats. 1963.
** Exclusive of those offenses for which the death penalty may be imposed.

such a high potential for danger to society, that confinement for longer than ordinary terms is necessary.

Comment, suggestion and criticism of the tentative draft proposals are welcome and will receive the interested attention of the Joint Legislative Committee and its staff. Communications should be sent to the California Penal Code Revision Project, School of Law (Boalt Hall), University of California, Berkeley, California 94720.

ARTHUR H. SHERRY
Project Director

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DIVISION 4. GENERAL PRINCIPLES OF LIABILITY

Chapter 1. Culpability

Section 400. Voluntary Act or Omission

A person is not guilty of an offense unless his liability is based on conduct which includes a voluntary act or the omission to perform an act of which he is physically capable.

Section 401. Voluntary Act: Possession as an Act

(1) A voluntary act is one performed consciously as a result of effort or determination.

(2) Possession is a voluntary act if the possessor knowingly procured or received the thing possessed, or was aware of his control of it for a sufficient time to have been able to terminate his control.

Section 402. Liability for Omissions

A person is not guilty of an offense if his liability is based solely on an omission unless the law defining the offense expressly so provides, or a duty to perform the act is otherwise imposed by law.

Section 403. Culpability

Except as provided in Section 407, a person is not guilty of a crime unless he acts intentionally, knowingly, recklessly or with criminal negligence, as the law may require, with respect to the conduct, the result thereof or the attendant circumstances which constitute the material elements of the crime.

Section 404. Culpable Mental States: Definitions

(1) A person acts intentionally, or with intent, with respect to his conduct or to a result thereof when it is his conscious purpose to engage in the conduct or cause the result.

(2) A person acts knowingly, or with knowledge, with respect to his conduct or to attendant circumstances when

he is aware of the nature of his conduct or that those circumstances exist. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is practically certain to cause the result.

(3) A person acts recklessly, or is reckless, with respect to attendant circumstances or the result of his conduct when he acts in awareness of a substantial risk that the circumstances exist or that his conduct will cause the result and his disregard is unjustifiable and constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

(4) A person acts with criminal negligence, or is criminally negligent with respect to attendant circumstances or the result of his conduct when he should be aware of a substantial and unjustifiable risk that the circumstances exist or that his conduct will cause the result and his failure to be aware of the risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the situation.

Section 405. Culpable Mental States: Application

(1) If the definition of an offense prescribes a culpable mental state but does not specify the conduct, attendant circumstances or result to which it applies, the prescribed culpable mental state shall apply to each such material element.

(2) If the definition of a crime prescribes criminal negligence as the culpable mental state, it is also established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish a culpable mental state, it is also established if a person acts intentionally or knowingly. When acting knowingly suffices to establish a culpable mental state, it is also established if a person acts intentionally.

(3) Knowledge that conduct constitutes an offense, or knowledge of the existence, meaning, or application of the statute defining an offense, is not an element of an offense unless the statute clearly so provides.

Section 406. Culpable Mental State Required

Except as provided in Section 407, if the definition of a crime does not expressly prescribe a culpable mental

state, a culpable mental state is nonetheless required and is established only if a person acts intentionally, knowingly or recklessly.

Section 407. Culpable Mental States: When Inapplicable

The culpable mental state requirements of Section 403 and Section 406 do not apply if the offense is an infraction or if the law defining the offense clearly indicates a purpose to dispense with any culpable mental state requirement.

COMMENT

Chapter 1. Culpability

This chapter is designed to express basic concepts of criminal liability, to define these concepts with more precision than existing law and to simplyfy the *mens rea* requirements of crime.

Penal Code Section 20 with its simple statement that "In every crime or public offense there must exist a union, or joint operation of act and intent, or criminal negligence." seems plain enough but its interpretation and its relationship with other sections of the code has resulted in a wide variety of definitions and qualifications which obscure the *mens rea* content of specific offenses and add to the trial court's burden of instructing the juries in clear and comprehensible language.

Penal Code Section 7 defines nine kinds of "intent": wilfully, neglect, negligence, negligent, negligently, corruptly, malice, maliciously and knowingly. In addition to these states of mind, the concepts of "specific" and "general" intent are used as a means of identifying and distinguishing the mental element required for criminal liability where discrimination between conduct and the intended result of conduct is important. There are other descriptive words and terms, such as "felonious intent," "malice aforethought," "guilty knowledge," "fraudulently," "lewdly" and the like, which by their very proliferation tend to obscure understanding.

In determining what are or what ought to be the mental requirements for the imposition of criminal liability,

the underlying concepts of *mens rea* must be identified and then described in reasonably precise terms. In Hall's [1] view, intent, recklessness and negligence "represent all the types of mental state that are considered relevant to penal liability." The *Model Penal Code (Section 2.02)* adds a fourth element by defining criminal liability as requiring an act done purposely, knowingly, recklessly or negligently. This formulation of *mens rea* has been adopted without substantial change in New York and Illinois and it is the pattern upon which the proposed tentative draft sections on culpability is based.

The draft does not change existing California law but attempts to restate it in more understandable terms.

Section 400. Voluntary Act or Omission

This section reiterates the traditionally fundamental requirement that criminal liability must be based on some act or conduct proscribed by law. It expands the requirement of act appearing in *Penal Code Section 20* by the inclusion of omission within the definition of act. (See 1 Witkin, *California Crimes,* 71, for the definition of omission as a "negative act.") The draft is a modification of *Model Penal Code Section 2.01* and conforms closely to *Section 4-1 of the Illinois Rev. Crim. Code of 1961.*

It should be noted that the section uses the phrase "conduct which includes a voluntary act." This is important in order to make it plain that an act alone may have significance only in the context of the actor's relevant conduct. Shooting a pistol, for example, is an act which, standing in complete isolation from conduct and circumstances, lacks significance. Shooting a pistol, however, as part of a game of Russian roulette is an act which has its own separate and peculiarly identifiable significance because of the conduct of which it is a part.

The characterization of the act as a "voluntary act" is relevant to the defense of unconsciousness contained in *Penal Code Section 26(5)* and to the defense of duress. The first of these is elaborated in Section 401(1). Involuntary conduct resulting from coercion is dealt with as a specific defense in *Division 5 of the Tentative Plan for Revision of the Penal Code* (Nov. 1964).

[1] Hall, *General Principles of Criminal Law,* 2d ed.

Section 401. Voluntary Act: Possession as an Act

This section makes it clear that a voluntary act excludes conduct which is the result of unconscious conduct or convulsive or reflex actions. This again reflects the provisions of *Penal Code Section 26(5)* and decisional law. (See *People v. Baker,* 42 Cal.2d 550, 268 P.2d 705 (1954); *People v. Gorshen,* 51 Cal. 2d 716, 336 P.2d 492 (1959); *People v. Rorerman,* 189 Cal. App. 2d 150, 10 Cal. Rptr. 870 (1961).)

The second part of Section 401 may not necessarily involve bodily movement but possession is behavior long accepted as significant in the criminal law. As a matter of logical convenience, it is properly included within the definition of "act." Possession, of course, must be conscious and willing and of sufficient duration to permit the possessor to divest himself of the thing possessed. This is in accord with existing law. *People v. Davis,* 231 Cal. App. 2d 180, 186, 41 Cal. Rptr. 617 (1964); *People v. Murray,* 198 Cal. App. 2d 805, 18 Cal. Rptr. 280 (1962). (Possession of narcotics—knowledge of character of thing possessed.)

Section 402. Liability for Omissions

This section restates the familiar principle of criminal law that omissions are not criminally punishable unless there is a correlative duty to act. It is the purpose of this section to make it clear that this duty may derive from the law defining the offense or from a duty to act imposed by some other statute. Specific statutes requiring the performance of an act and making failure criminally punishable are common: "hit-run" driving, failure to pay taxes, failure to make required reports of gunshot wounds, failure to provide for minor children. There are many others. A legal duty to act may arise from some other legal obligations. In *People v. Montecino,* 66 Cal. App. 2d 85, 152 P.2d 5 (1944), a conviction of involuntary manslaughter was sustained where a bedridden patient died because of the neglect of the person who had contracted to care for her.

Section 403. Culpability

This section lies at the heart of the proposed culpability sections. It reduces the multiple terminology used

to define the elements of *mens rea* in California law to the four basic mental states identified by the draftsmen of the Model Penal Code. At the same time the Model Penal Code's terminology has been modified to reflect familiar California usage and to simplify the Model Penal Code's phraseology. The exclusion of the offenses identified in Section 407 is for the purpose of making it clear that no act which is not blameworthy should be punishable except for petty offenses or unless the statute leaves no doubt that it is the legislative intent to impose liability without fault. (See comment on Section 407, *infra.*)

Section 404. Culpable Mental States: Definitions

Subsection (1). "Intentionally" and "intent" are not defined directly in the Penal Code but they are assimilated with the term "wilfully" and defined as "simply a purpose or willingness to commit the act, or make the omission referred to." (*Penal Code Section 7(1).*) Judicial definition speaks of intent as meaning nothing more than the intentional doing of that which the law declares to be a crime. (*People v. Zerillo,* 36 Cal. 2d 222, 223 P.2d 223 (1950); *People v. Wade,* 71 Cal. App. 2d 646, 163 P.2d 59 (1945).)

In general, however, the decisional law has shown little analytical interest in the meaning of the term. It has been used without substantial difference, however, in the same sense as the draft section in 404(1). The Model Penal Code uses the word "purposely" instead of "intentionally." Because California statutes use "intent" and "intentionally" almost exclusively, it seemed wise to retain the more familiar words.

Subsection (2). "Knowingly" is defined in *Penal Code Section 7(5)* as importing only ". . . a knowledge that the facts exist which bring the act or omission within the provisions of this code." This emphasis on attendant circumstances is reflected in the draft. The distinction between "knowingly" and "intentionally" is a narrow one; indeed at least one California case has stated that the two terms are synonymous. (*People v. McCree,* 128 Cal. App. 2d 196, 275 P.2d 95 (1954).) Knowledge, however, is distinguishable from intention; there are a number of offenses in which the distinction

is important and in which the words "knowledge" or "knowingly" are not only useful but necessary. In the case of possession of a contraband, for example, it is not enough that the defendant's conduct be intentional and with a purpose of exercising custody and control; it is also necessary that he have the added mental element of knowledge of the character of the thing possessed. *Morissette v. United States,* 342 U.S. 246 (1952).

The term "knowingly" or "with knowledge" are currently used in many statutes: possession of narcotics (*Health and Safety Code Section 11500*); receiving stolen property (*Penal Code Section 496*); alteration of public record (*Government Code Sections 6200, 6201*); false pretenses (*Penal Code Section 484*); forgery of telephone message (*Penal Code Section 474*); incest (*Penal Code Section 285, People v. Patterson,* 102 Cal. 239, 242, 36 Pac. 436 (1894)); perjury (*Penal Code Sections 118, 118a*); hit-run driving (*Vehicle Code Section 20001*).

Subsection (3). The concept of recklessness as an element of criminal liability, apart from its use in automobile driving regulations like *Vehicle Code Section 23103* (reckless driving), was not the subject of statutory definition in the United States before the enactment of the Illinois Revised Criminal Code of 1961 and the New York Revised Penal Law (Effective 1967). Both of these jurisdictions, following the Model Penal Code pattern, adopted definitions in substantial accord with *Model Penal Code Section 2.02(2)(c):*

> "A person acts recklessly with respect to a material element of an offense when he consciously disregards a substantial and unjustifiable risk that the material element exists or will result from his conduct. The risk must be of such a nature and degree that, considering the nature and purpose of the actor's conduct and the circumstances known to him, its disregard involves a gross deviation from the standard of conduct that a law-abiding person would observe in the actor's situation."

Recklessness, however, is subsumed in almost every definition of implied malice aforethought. In a few cases it has received express recognition. In *People v. Hubbard,* 64 Cal. App. 27, 220 Pac. 315, for example, the court

held that guilt of murder in the 2d degree may be established if the circumstances discloses "such a wanton recklessness as to show an abandoned and malignant heart." Another early case, *People v. Doyell,* 48 Cal. 85 (1874), used similar language: "And the crime is equally murder where the malice aforethought is . . . implied—as from the killing in the absence of considerable provocation, or from such wanton recklessness . . . as shows an abandoned and malignant heart." Finally, in *People v. Curry,* 192 Cal. App. 2d 664, 13 Cal. Rptr. 596 (1961), the court reiterated the theme of these early decisions in holding that malice is implied from "'wanton recklessness."

If recklessness is an element of murder, the law ought to say so without endeavoring to translate it into the medievalism of "abandoned and malignant heart." (See Collings, *Negligent Murder,* 49 Calif. L. Rev. 254 (1961).)

Recklessness is defined in Section 500 of the Restatement of Torts, cited with approval in *Donnelly v. The S.P.,* 18 Cal. 2d 863, 869, 118 P.2d 465 (1941):

> "The actor's conduct is in reckless disregard of the safety of another if he intentionally does an act or fails to do an act which it is his duty to do, knowing or having reason to know of facts which would lead a reasonable man to realize that the actor's conduct not only creates an unreasonable risk of bodily harm to the other but also involves a high degree of probability that substantial harm will result to him."

The Restatement of Torts' definition was most recently accepted in California in *Gibbons v. Southern Pacific Co.,* 194 Cal. App. 2d 39, 14 Cal. Rptr. 736 (1961). There is some confusion in decisions which equate recklessness with intention. These two concepts are distinguishable however: intention: consequences desired; recklessness: consequences foreseen but not desired.

Mere knowledge of the *possibility* is not enough; probability is required unless the conduct engaged in has no social utility.

Reckless driving of an automobile is a common offense. The California courts have defined the concept of recklessness as used in *Vehicle Code Section 23103* in substantial accord with the foregoing analysis. Thus, even gross negligence is not "wilful misconduct" and does not

amount to reckless driving. *People v. Allison,* 101 Cal. App. 2d 932, 226 P.2d 85 (1951); wilful misconduct, as defined in *Vehicle Code Section 17158,* is equated with recklessness and defined as the intentional doing of something with knowledge, express or implied, that serious injury is a probable as distinguished from possible result, or the intentional doing of an act with a wanton and reckless disregard of its possible result, *Van Fleet v. Heyler,* 51 Cal. App. 2d 719, 125 P.2d 586 (1942).

The draft differs from its prototype, *Model Penal Code Section 2.02(2)(c),* in an effort to make it plain that the actor must be aware that his conduct is risk-creating (a subjective test) but to leave the judgment as to the unjustifiability of his conduct to the determination of the trier of fact by the application of an objective standard. He must be aware too, that the risk is "substantial," *i.e.,* that his conduct involves probability of harm. (Reckless driving requires proof that defendant intentionally did something "with knowledge that injury to another was probable . . ." *People v. Schumacker,* 194 Cal. App. 2d 335, 14 Cal. Rptr. 924 (1961) citing *Allison, supra.*)

Subsection (4). Penal Code Section 7(2) defines the negligence concept as follows: "The words 'neglect,' 'negligence,' 'negligent,' and 'negligently' import a want of such attention to the nature or probable consequences of the act or omission as a prudent man ordinarily bestows in acting in his own concerns." For the purpose of imposing criminal liability for inadvertent acts, *Penal Code Section 20* requires that the act be accompanied by "criminal negligence." *People v. Penny,* 44 Cal. 2d 861, 879, 285 P.2d 926 (1955) defined criminal negligence in these terms:

> "The negligence must be aggravated, culpable, gross, or reckless, that is, the conduct of the accused must be such a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances as to be incompatible with a proper regard for human life, or, in other words, a disregard of human life or an indifference to consequences."

The proliferation of adjectives in the *Penny* opinion are more productive of confusion than precision. (See

Comment, 8 Stan. L. Rev. 463 (1956). Indeed some of the terms, such as "reckless" and "diregard of human life" come closer to knowing and intentional conduct than failure to be aware of or to foresee a substantial risk. In this respect the court overlooked earlier decisions holding that negligence, even though it be gross negligence, is not wilful misconduct and does not amount to reckless driving. (*Meek v. Fowler,* 3 Cal. 2d 420, 45 P.2d 194 (1935); *McCann v. Hoffman,* 9 Cal. 2d 279, 70 P.2d 909 (1937); *Porter v. Hoffman,* 12 Cal. 2d 445, 85 P.2d 447 (1938). (Wilful misconduct has been held synonymous with recklessness. *People v. McNutt,* 40 Cal. App. 2d 835, 105 P.2d 657 (1940); 14 Hastings L.J. 415 (1963).)

The distinction between negligent conduct and intentional, knowing or reckless conduct should be made clear: negligence does not involve awareness. It is descriptive rather of inadvertent risk-creation in circumstances in which there should be awareness of the risk.

The draft statute is designed to make this distinction plain. The standard against which the actor's conduct is to be weighed is the objective standard of "gross deviation from the standard of care that a reasonable person would exercise." This definition preserves the principle that criminal liability is not to be imposed in cases of ordinary negligence but only in those cases embraced within the concept of gross or criminal negligence.

Section 405. Culpable Mental States: Application

Subsection (1). A statute may describe an offense in terms of a number of material elements (conduct, attendant circumstances or result) but prescribe only a single culpable mental state. This may result in ambiguity because of the uncertainty as to whether the particular *mens rea* stated applies to all or only the element of the offense which it precedes. In order to avoid this confusion, draft section 405(1) provides specifically that the culpable mental state applies to all of the material elements. The draft is based upon *Model Penal Code Section 2.02(4).* The comment of the draftsmen provides a useful illustration (*Model Penal Code Tentative Draft No. 4,* p. 129):

"Paragraph (4) seeks to assist in resolution of a common ambiguity in penal legislation, the statement of a particular culpability requirement in the definition of an offense in such a way that it is unclear whether the requirement applies to all the elements of the offense or only to the element that it immediately introduces. The draftsmen of the Wisconsin Code put the problem in these terms: 'When, for example, a statute says that it is unlawful to "wilfully, maliciously, or wantonly destroy, remove, throw down or injure any . . . [property] . . . upon the land of another," do the words denoting the requirement of intent apply only to the doing of the damage or do they also modify the phrase "upon the land of another," thus requiring knowledge or belief that the property is located upon land which belongs to another?' We agree with their view that these 'problems can and should be taken care of in the definition of criminal intent' (*The Problem of Mental State in Crime,* p.4, Mimeographed memorandum for Wisconsin Legislative Council). See also Remington & Helstad, *The Mental Element in Crime—A Legislative Problem* (1952) Wis. L. Rev. 644, 666."

California has enacted statutes like the example in the foregoing quotation: *Penal Code Section 384a* (wilful or negligent cutting, destroying or removing of shrubs or plants growing upon state or county rights-of-way); *Penal Code Section 449a* (wilful and malicious burning of the personal property of another); *Penal Code Section 450a* (wilful and intentional burning of personal property which is insured against loss or damage by fire); *Penal Code Section 622½* (wilful injury or defacement of any object or thing of archeological or historical interest or value whether situated on private lands or on public property).

Subsection (2). This subsection simply provides that the minimal basis for culpability prescribed in any statute does not exclude proof of the more serious bases of liability. Thus, if a homicide is committed with criminal negligence, the actor is, of course, culpable if his conduct was reckless, knowing or intentional.

Subsection (3). This subsection is a restatement of *Penal Code Section 7(5)* which provides that "knowingly" as used in the Penal Code does not require any knowledge of the unlawfulness of an act or omission. The same principle is expressed in *Penal Code Section 7(1):*

> "The word 'wilfully' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act, or make the omission referred to. It does not require any intent to violate law, or to injure another, or to acquire any advantage."

The exception in the draft for statutes requiring knowledge of illegality has been added in the light of statutes which make this kind of knowledge an element of criminal conduct. Examples: *Elections Code Section 29431* (every person who "procures, assists, counsels, or advises another to give or offer his vote at any election, knowing that the person is not qualified to vote . . ."); *Elections Code Section 29430* (it is a felony to attempt to vote "fraudulently" at an election "not being entitled to vote . . ."); *Penal Code Section 359* (declares that it is an offense to solemnize an illegal marriage).

Section 406. Culpable Mental State Required

The purpose of this section is to provide that criminal liability for negligent conduct may not be imposed for the violation of a statute which prescribes no culpable mental state. The imposition of liability for inadvertent acts has long been criticized on the ground that the threat of punishment cannot deter one from being unaware of his situation and that the quality of negligence does not involve the kind of blameworthiness which is responsive to the corrective or rehabilitative methods of the criminal law. Hall, *General Principles of Criminal Law,* 245.

These arguments, however, have not been persuasive with respect to conduct involving substantial risk of death or great bodily injury. The concept of involuntary manslaughter is firmly embedded in the law.

Although it may not be subject to empirical proof that the imposition of criminal liability for negligence has deterrent value, most people hold a moral conviction that the imposition of sanctions for negligent conduct does

have a deterrent effect and is important in supplying individuals with motivation for behaving carefully in situations of risk.

Criminal liability for negligent conduct, however, should be, and generally is, narrowly restricted to offenses involving conduct dangerous to life and limb. The relevant California decisions are almost entirely manslaughter cases and the definitions of negligence which they use invariably speak in terms of conduct incompatible with proper regard for human life. The New York Revised Penal Law restricts negligence to cases of homicide and assault.

It is the purpose of the draft subsection to retain criminal negligence as a basis for culpability but to make it clear that it cannot serve in this respect unless the statute defining the offense explicitly so provides.

Section 407. Culpable Mental States: When Inapplicable

The Tentative Plan for the Revision of the Penal Code proposes that crimes be classified in three categories: (1) felonies; (2) misdemeanors, (3) infractions. It is the purpose of this classification to distinguish between those offenses which should be treated as true crimes because of their content of moral blameworthiness and petty or regulatory offenses designed to regulate and control conduct which, apart from the statute defining the offense, are without moral content. This distinction was recognized at common law in the classification of crimes by the designations *malum in se* and *malum prohibitum.* Dissatisfaction with this terminology led to the substitution of the "crimes—civil offense" distinction (Sayre, *Public Welfare Offenses,* 33 Colum. L. Rev. 55 (1933) and to the conclusion that only those offenses which could be regarded as "true" crimes should be made punishable by traditional criminal sanctions. The civil offense or public welfare offense category may be regarded as essentially non-criminal and ordinarily punishable only by fine or very limited periods of imprisonment. Sayre classified the latter into eight major groups: (1) illegal sale of intoxicating liquor, (2) sale of impure or adulterated food or drugs, (3) sale of misbranded articles, (4) violation of anti-narcotic acts, (5) criminal

nuisances, (6) violations of traffic regulations, (7) violation of motor vehicle laws, (8) violations of general police regulations passed for the safety, health or well-being of the community.

Explicitly involved in this classification is the proposition that strict or absolute liability for crime should be imposed only in the infraction area; that in all cases of true crime, criminal liability should not attach unless the prohibited act is committed by one who acts with a culpable state of mind.

This, of course, is the command of *Penal Code Section 20* but until ten years ago the California decisions have reiterated the proposition that the intentional doing of an act expressly prohibited by statute constitutes the offense denounced by the law regardless of good motive or ignorance of the criminal character of the act. Beginning with *People v. Winston,* 46 Cal. 2d 151, 293 P.2d 40 (1956), which rejected strict liability for the offense of possession of narcotic drugs, the California Supreme Court set out on a new course which in bigamy and statutory rape prosecutions established the requirement of a culpable state of mind. *People v. Vogel,* 46 Cal. 2d 798, 299 P.2d 850 (1956); *People v. Hernandez,* 61 Cal. 2d 529, 39 Cal. Rptr. 361 (1964). Finally, in *People v. Stuart,* 47 Cal. 2d 167, 302 P.2d 5 (1956), the California Supreme Court indicated that liability without fault must be confined to "public welfare statutes."

The draft of Section 407 provisions accords with this view. Section 407 excepts from the normal requirement of voluntary act plus culpable mental state only those offenses which are "infractions" or only those in which the statute defining the offense indicates a clear legislative purpose to impose strict liability. To be consistent with the implications of *Stuart,* such a strict liability offense should not be graded above the misdemeanor level.

The term "infraction" has been substituted for the original designation of civil offense to avoid confusion between "civil offense" and the more general term "offense."

Section 408. Persons Subject to Juvenile Court Law: Exemptions

No person may be tried or convicted of an offense if:

(1) his age at the time of the conduct charged as an offense places him within the exclusive jurisdiction of the juvenile court; or

(2) he was certified to the juvenile court pursuant to the provisions of Welfare and Institutions Code Section 603 or Section 604 or was made the subject of a petition to commence proceedings in the juvenile court pursuant to Welfare and Institutions Code Section 653 because of having committed an offense and the juvenile court has not made an order directing that he be prosecuted under general law.

COMMENT

Section 408. Persons Subject to Juvenile Court Law: Exemptions

This section is designed to bring related provisions of the criminal law and the Juvenile Court Law into conformity. *Penal Code Section 26 (1)* provides that children under the age of fourteen are not capable of committing crime in the absence of clear proof of knowledge of the wrongfulness of their conduct. Since 1961, however, this section has been in conflict with the jurisdictional provisions of the Juvenile Court Law which require the submission of all criminal actions against persons under the age of eighteen years to that court and give it exclusive jurisdiction in those cases where the minor is charged with a felony and is under sixteen or where he is charged with a misdemeanor and is under eighteen. (*Welfare and Institutions Code Sections 602, 603, 707;* see also, *40 Ops. Cal. Atty. Gen. 83.*)

Subsection (1) of the draft relates to those who, because of their age at the time of the conduct resulting in the charge of an offense, are subject only to the processes of the juvenile court and cannot be remanded for trial under the general law.

Subsection (2) makes explicit provision for those who may be remanded for prosecution under the general law upon the determination of the juvenile court that they would not be amenable to the processes of the Juvenile Court Law (*Welfare and Institutions Code Section 707*). It is drafted to cover not only those who have been certified to the juvenile court by some other court but also those who have been subject to juvenile court proceedings directly because of the commission of an offense.

Section 409. Criminal Liability of Corporations and Unincorporated Associations

(1) Except insofar as a statute other than this code provides to the contrary, a corporation may be convicted of the commission of an offense:

(a) if the offense is a crime which was authorized, requested, commanded, committed or recklessly tolerated by the board of directors or by an officer or executive agent acting within the scope of his authority and in behalf of the corporation, or

(b) if the offense is an infraction which was committed by an agent of the corporation acting in behalf of the corporation and within the scope of his office or employment.

(2) An unincorporated association may be convicted of the commission of an offense:

(a) if the offense is defined by a statute other than this code which expressly provides for the criminal liability of an unincorporated association, and

(b) the offense was committeed by an agent of the association acting in its behalf and within the scope of his office or

(3) As used in this section,

(a) "Agent" means any director, officer, employee or other person authorized to act in behalf of the corporation or association.

(b) "Executive agent" means an officer or agent of a corporation who is invested with managerial authority and responsibility for the execution of corporate policy.

COMMENT

Section 409. Criminal Liability of Corporation and Unincorporated Associations

In General. This section is a codification of existing California law under which corporations have long been held subject to prosecution for criminal offenses. *Penal*

Code Sections 1390–1397 provide the procedural rules for the prosecution of corporations but there is no substantive Penal Code section defining the criminal liability of corporations. *Section 7 of the Penal Code* provides that the word "person" includes a corporation as well as a natural person. This definition is the basis for appellate court decisions holding that corporations may be convicted of criminal offenses. (*People v. Palermo Land and Water Co.,* 4 Cal. App. 717, 89 Pac. 723 (1907); *United States v. John Kelso Co.,* 86 Fed. 304 (D.C. Calif. 1898;) *People v. Schomig,* 74 Cal. App. 109, 239 Pac. 413 (1925).)

Subsection (1). The introductory part of the draft limits the effect of its provisions to offenses defined by the revised code. Other statutes which impose criminal liability on corporations are left unaffected. There are a number of these in the Corporations Code and the Financial Code; it would be unwise to subject them to the risk of implied repeal.

Subsection (1)(a). This subsection is clearly in accord with existing law in its provision that a corporation may be liable for crime if the offense was authorized or committed by a board of directors, an officer or executive agent acting in his official capacity and in behalf of the corporation. It is probable that reckless toleration of a criminal offense by a corporate officer is punishable under present law. The draft makes this basis for liability explicit. The term "executive agent" defined in Subsection (3)(b) is substituted for "high managerial agent" which is used in the Model Penal Code. This change reflects the suggestions of a number of corporation counsel who were consulted by the staff.

Subsection (1)(b) limits absolute liability to infractions, thus conforming to the principle that serious penalties should be imposed only for blameworthy conduct.

Subsection (2) excludes unincorporated associations from criminal liability except as provided for in statutes other than the revised code. The draft makes it clear that in such cases liability must depend upon the conduct of an agent of the association acting within the scope of his authority. Members of the bar engaged in

corporation law practice were persuasive in arguing that criminal liability should not be extended to include unincorporated associations except insofar as present law may provide. These associations appear to exist in such bewildering variety that it is difficult to foresee the impact upon them of any extension of criminal liability.

Subsection (3). This subsection contains a self-explanatory definition of "agent" and "executive agent."

In addition to the advice of corporation counsel, inquiries were addressed to a representative sampling of district attorneys requesting comment upon the usefulness of the concept of corporate criminal liability. Responses were uniform that criminal responsibility of corporations should be retained.

Although prosecutions against corporations appear to be infrequent, all of the offices responding have had criminal cases against corporations. These range from the prosecution of a savings and loan institution in Sacrament for violation of the Financial Code, which was punished by a fine of $5,000.00, to a prosecution for the contamination of a stream in Mendocino County. It is also reported that threat of prosecution is an effective means of securing compliance with regulatory laws but none of the offices queried were able to provide estimates of the frequency of this practice.

Chapter 2. Criminal Liability for the Conduct of Another

Section 450. Criminal Liability for the Conduct of Another: Non-Responsible Agents

A person is guilty of an offense if, acting with the culpability required for the offense, he causes or aids an innocent or non-responsible person to engage in conduct prohibited by the definition of the offense.

Section 451. Criminal Liability for the Conduct of Another: Complicity

A person is guilty of an offense if, with the intention of promoting or assisting in the commission of the offense, he induces or aids another person to commit the offense. If the definition of the offense includes lesser offenses, the offense of which each person shall be guilty shall be determined according to his own culpable mental state and to those aggravating or mitigating factors which apply to him.

Section 452. Criminal Liability for the Conduct of Another: Criminal Facilitation

A person is guilty of criminal facilitation when, knowing that another person intends to engage in conduct which in fact constitutes an offense, he knowingly furnishes substantial assistance to him.

Criminal facilitation of a felony of the first degree is a felony of the third degree.

Criminal facilitation of a felony of the second or of the third degree is a misdemeanor.

Criminal facilitation of a misdemeanor is a petty misdemeanor.

Section 453. Criminal Liability for the Conduct of Another: Non-Availability of Defenses

In any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is no defense that:

(1) the offense can be committed only by a particular class of persons to which the defendant does not belong; or

(2) the other person has legal immunity from prosecution, or has not been prosecuted for or convicted of an offense based upon the conduct in question, or has previously been acquitted.

Section 454. Criminal Liability for the Conduct of Another: Defenses

Unless otherwise provided by law, in any prosecution in which the criminal liability of the defendant is based upon the conduct of another person, it is a defense that:

(1) the defendant was a victim of the offense; or

(2) the defendant was either expressly or by implication made not accountable for the conduct by the law defining the offense; or

(3) under circumstances manifesting a voluntary abandonment of the culpable mental state required by law, the defendant withdrew from participation in the offense and made a substantial effort to prevent its commission.

COMMENT

Chapter 2. Criminal Liability for the Conduct of Another

This article codifies the various aspects of the law treating the liability of one person for an offense when the offense is committed by another. These aspects are traditionally treated in terms of "innocent agents" and complicity.

To the extent that the problems treated in the draft have been the subject of legislation or judicial decision, the draft, in the main, does not differ substantially from existing law. One substantial change, however, has been the creation of a new crime, Criminal Facilitation, with a lesser penalty than that imposed for complicitous conduct. See Section 452. Other changes are, for the most part, clarifying.

Section 450. Criminal Liability for the Conduct of Another: Non-Responsible Agents

Section 450 is a restatement of existing law. There is no dispute that one who "commits" an offense through another, who is himself incapable of committing the crime, is guilty of the offense. Present *California Penal Code*

Section 31 expressly lists children under fourteen, lunatics, idiots, drunks and those compelled to act under duress as categories of persons whose incapacity will render the actor responsible for the offense, if he uses them to commit the prohibited conduct. Exculpation of these classes of persons is treated in the proposed code in Section 408 (juveniles), Section 510 (intoxication), Section 520 (duress), and Section 530 (mental illness). The *Model Penal Code, Proposed Official Draft, Section 2.06(2)* uses the more general description of "innocent or irresponsible" actor. Inasmuch as what is being codified is a general principle, the proposed code chooses the use of more general language, as exemplified by the Model Penal Code.

Liability is imposed under Section 450 not only for "causing" the innocent agent to commit the crime but also for intentionally aiding him to do so. Thus, one, who, with the appropriate culpability, gives assistance to a child, insane person or other who has determined to engage in conduct which would constitute an offense if committed by a responsible actor, is liable for the substantive offense to the same extent as if he had caused the conduct of the non-responsible actor.

Section 451. Criminal Liability for the Conduct of Another: Complicity

1. Present California law is somewhat ambiguous on the question of the state of culpability required for complicity. One basic issue is whether, in order to become an accomplice, one must intend to promote or facilitate the commission of the offense or whether knowledge that assistance will contribute to the commission of the offense suffices, even though there may not be a purpose or intention to commit the offense. *California Penal Code Section 31* provides:

> "All persons concerned in the commission of the crime . . . whether they directly commit the act constituting the offense, or aid and abet in its commission or, not being present, have advised and encouraged its commission . . . are principals in any crime so committed."

Judicial decisions applying this section at times speak in terms of "knowledge" being sufficient; almost all involve situations where there were reasonable inferences that a more culpable state was present. Other decisions use language which appears to require a purpose to bring about the commission of the offense. Section 451 resolves the issue by requiring that the accomplice have the intention of promoting or assisting the commission of the offense, leaving knowing assistance to the new crime of Criminal Facilitation (Section 452).

2. The type of conduct required for complicity is that the actor "induces or aids" another to commit the offense. This language is intended to include the types of conduct sometimes described in a series of verbs, such as solicits, requests, commands, importunes or encourages.

The second sentence of Section 451 treats the case of an offense whose definition includes lesser offenses as, for example, criminal homicide. If, knowing that A may be provoked into killing X, B provokes A for the purpose of killing X, A may be guilty of manslaughter, while B under Section 451 may be guilty of murder.

Section 452. Criminal Liability for the Conduct of Another: Criminal Facilitation

Section 452 creates a new crime, Criminal Facilitation. It is similar to the *New York Revised Penal Law Section 115.00* (effective September 1, 1967). It is directed at knowing, but not purposeful, assistance to one who is known to intend to engage in conduct constituting an offense. The classic illustration of such conduct is the supplier of yeast, sugar and cans to one who is known to be engaged in an illicit distilling operation. See *Falcone v. United States,* 109 F.2d 579 (2d Cir., 1940), *aff'd,* 311 U.S. 205 (1940). Inasmuch as Section 451 requires a purpose to commit an offense, the mere supplier or aider would not be guilty of violating that section. Section 452 covers that conduct, but imposes a lesser penalty than Section 451.

The requirement that the assistance be "substantial" is intended to leave to the jury questions like whether the one who has committed the offense, *i.e.,* the illicit distillation of alcohol, could have obtained the materials

readily elsewhere. If so, a jury could reasonably conclude that the facilitator's assistance was not substantial.

Section 453. Criminal Liability for the Conduct of Another: Non-Availability of Defenses

Section 453 expressly excludes certain defenses to charges based on complicity.

Subsection (1) makes clear that one can be an accomplice even though the definition of the offense is such that he could not be a principal. An example would be assisting a public officer to embezzle or otherwise misappropriate public funds, where the offense presumably can be committed only by the public officer.

Subsection (2) makes clear that the legal immunity of the principal, for example, as a consequence of immunity provided for testimony, or of diplomatic immunity, will not exculpate the accomplice. Subsection (2) also retains the substance of *California Penal Code Section 972, i.e.,* it is irrelevant to the liability of the accomplice whether a principal has been prosecuted or tried.

Section 454. Criminal Liability for the Conduct of Another: Defenses

Section 454 sets forth specific defenses. It is qualified by the language, "unless otherwise provided by law." Thus, Section 454 states a general principle which, however, may not apply if the statute creating the offense provides to the contrary.

Subsection (1) makes clear that the victim of the offense, that is, the one at whose protection the substantive offense is aimed, is not to be considered an accomplice even though his assistance made the commission of the offense possible. Illustrations would be the payment of ransom to a kidnapper, or the cooperation of the female in a statutory rape case.

An illustration of the application of *Subsection (2)* would be the liability of an unmarried woman for the crime of adultery where the offense is limited in terms to the married man. Whether the unmarried woman would be liable as an accomplice to the crime of adultery depends upon the intended coverage of that crime and not upon a general theory of complicity.

Subsection (3) establishes the defense of abandonment. A defendant charged on the basis of complicity may defend on the ground that he abandoned his participation, if the circumstances manifest an abandonment of the culpability required by law, withdrawal from participation and a substantial effort on his part to prevent the commission of the offense. This is a somewhat more liberal defense than that provided by present California law which apparently requires that the accomplice notify the other party of his intention to withdraw, where that is practicable, and do everything he can within his power to prevent its commission. See *People v. Ortiz,* 63 Cal. App. 662, 219 Pac. 1024 (1923); *People v. King,* 30 Cal. App. 2d 185, 85 p.2d 928 (1938).

One of the more difficult problems in the general area of complicity relates to the question of double conviction or double punishment where as a result of one transaction the defendant could be the principal in the commission of one crime and an accomplice in the commission of another. See, *e.g., People v. Klapp,* 24 Cal. 2d 835, 151 P.2d 237 (1944). An illustration would be the giving of a bribe to a public officer, where one statute makes bribe-giving a crime and another statute makes bribe-taking a different one. Theoretically, the giver of the bribe would be liable for that substantive offense and also would be an accomplice in the receipt of the bribe by the public officer. Contrary to the solution posed by the *Model Penal Code, Proposed Official Draft, Section 2.06(6)(b),*[1] this complicity article contains no express provision on the issue, leaving the specific resolution of the various aspects of the problem to the sections treating double jeopardy, multiple convictions, sentencing and corroboration of an accomplice's testimony.

[1] ". . . a person is not an accomplice in an offense committed by another person if: . . .
(b) the offense is so defined that this conduct is inevitably incident to its commission."

DIVISION 5. EXEMPTIONS AND DEFENSES

Section 510. Intoxication

(1) Intoxication in itself is not a defense to a charge of the commission of an offense but in any trial, evidence of the intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the offense.

(2) As used in this section, "intoxication" means an impairment of mental or physical capacities resulting from the introduction of alcoholic, narcotic or other substances into the body.

COMMENT

Section 510. Intoxication

The prevailing rule, drawn from the common law and restated in *Penal Code Section 22,* provides that voluntary intoxication is not a defense but that the fact of intoxication is relevant to the issue of mental capacity when purpose, motive or intent is a necessary element of the crime. Crimes of this nature are classified as "special intent" offenses; so-called "general intent" crimes can be committed by an unconscious person if his condition is the result of his self-induced intoxication. This special treatment of the conduct of voluntarily intoxicated persons and its discrimination between kinds of unconsciousness has been described as "unconvincing" (see the language of Mr. Justice Duniway in *People v. Alexander,* 182 Cal. App. 2d 281, 6 Cal. Rptr. 153 (1960) and as a concept that is plainly incompatible with the traditional and otherwise prevailing requirement that criminal liability requires proof of both act and a concurrent culpable state of mind.

As a matter of logic, intoxication is indistinguishable from any other condition of mind relevant to the existence of *mens rea.* The criminality or blameworthiness of an act as a matter of common law principle is dependent upon the actual state of the actor's mind. If an act is done by an individual who is not conscious, who is

grossly hallucinated or whose mental functions have been substantially impaired by shock, he is in an objective sense no different from the person whose mind is in the same disordered condition as a result of intoxicants or drugs. This is recognized when the intoxicated condition is involuntary, *i.e.,* where the intoxicants or drugs are introduced into the body by duress, by fraud or unknowingly.

Putting logic aside, however, the common law has held firmly to the position that an offense committed by a voluntarily drunken person is culpable and that his intoxication as a practical matter is to be considered only as a factor which may operate to diminish responsibility. In Hall's words, (p. 537) the common law persisted in "the judgment . . . that a person who voluntarily indulges in alcohol should not escape the consequences."

The culpability requirements of this proposed revision (Sections 400–407) are not stated in terms of the existing "special intent—general intent" classification. They express culpability in terms of intention, knowledge, recklessness and negligence. The effect of draft Section 510, therefore, is to extend the defense of intoxication, even though voluntary, to a person who acts recklessly where, because of his intoxication, he is unaware or unconscious of the risk attached to his conduct. As a matter of principle, it is difficult to justify culpability based upon awareness of conduct in circumstances where awareness is non-existent. Where some power of perception remains in spite of the intoxicated person's condition, negligence is not foreclosed as a logical basis for the imposition of liability.

The draftsmen of the Model Penal Code faced the logic of the argument that there ought to be no special rule about intoxication and that as a matter of evidence, intoxication should be admissible whenever conduct or *mens rea* make it relevant. They concluded, however, that there were strong considerations for retaining the prevailing rule. They made this choice because of the "weight of the prevailing law" and because they concluded that one who becomes so drunk as to destroy his powers of perception and judgment engages in conduct without any social value when compared with the resulting risk of danger. They also felt that departure from the exist-

ing law would create serious problems of proof. The Model Penal Code's draft (*Proposed Official Draft, Section 2.08*) (see Appendix, p. 45), therefore, explicitly provides that whenever recklessness or negligence suffices to establish the offense, an exculpation based upon intoxication is precluded by law.

This is consistent with California's somewhat strained interpretation of its statute in the decisional law prior to *People v. Conley,* 64 Cal. 2d 310, 49 Cal. Rptr. 815, 411 P. 2d 911 (1966). *Penal Code Section 22* repeats the traditional rule that voluntary intoxication is not a defense but that the fact of intoxication is relevant where purpose, motive or intent is a necessary element of the crime. "Intoxication" as used in the codes includes intoxication as the result of the taking of drugs (*People v. Baker,* 42 Cal. 2d 559, 268 P. 2d 705 (1954)). "Involuntary intoxication" is not defined.[1]

The problem of statutory interpretation arises when a defendant relies on the defense of unconsciousness. If this condition is the result of intoxication, *Penal Code Section 22* is in conflict with *Penal Code Section 26 (5),* which states the unqualified principle that an unconscious person is incapable of committing a criminal act.

Despite this apparently complete defense, the Supreme Court of California has clung firmly to the proposition that "the union or joint operation of act and intent or criminal negligence (that) must exist in every crime, including manslaughter (*Penal Code Section 20*), . . . is deemed to exist irrespective of unconsciousness arising from voluntary intoxication." *People v. Conley,* 64 Cal. 2d, at p. 324. In the same case, however, the court conceded that a defense based upon unconsciousness as the result of intoxication carries with it the defense of diminished capacity. To be sure, this leaves some part of the no-defense doctrine still standing but it opens the door to evidence of voluntary intoxication in any case in which the doctrine of diminished responsibility may apply.

On balance and because of the unsatisfactory result of the efforts of the courts to reconcile the logical conflict

[1] In his *General Principles of Criminal Law,* at p. 529, Hall observes that an examination of the relevant decisions discloses "that involuntary intoxication is simply and completely non-existent." Recently, however, involuntary intoxication has been commonly interposed as the defense where the intoxication was the result of the inadvertent use of drugs as in *Baker.*

in the present law, draft Section 510 appears to be the better choice.

The Model Penal Code common law approach was considered and rejected in the New York revision (see Appendix, p. 46). Treating the problem as a rule of evidence, the New York statute provides that intoxication, as such, is not a defense, but evidence of intoxication may be offered by the defendant whenever it is relevant to negative an element of the crime charged. This is the model for the draft.

The Model Penal Code's further proviso that intoxication is not a mental disease is a self-evident proposition. Its concept of "pathological intoxication" seems akin to accidental intoxication and is also unnecessary if evidence of intoxication is made generally admissible with respect to any culpable mental state.

Appendix

MODEL PENAL CODE

Proposed Official Draft

Section 2.08. Intoxication

(1) Except as provided in Subsection (4) of this Section, intoxication of the actor is not a defense unless it negatives an element of the offense.

(2) When recklessness establishes an element of the offense, if the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial.

(3) Intoxication does not, in itself, constitute mental disease within the meaning of Section 4.01.

(4) Intoxication which (a) is not self-induced or (b) is pathological is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacks substantial capacity either to appreciate its criminality [wrongfulness] or to conform his conduct to the requirements of law.

(5) *Definitions.* In this Section unless a different meaning plainly is required:

(a) "intoxication" means a disturbance of mental or physical capacities resulting from the introduction of substances into the body;

(b) "self-induced intoxication" means intoxication caused by substances which the actor knowingly introduces into his body, the tendency of which to cause intoxication he knows or ought to know, unless he introduces them pursuant to medical advice or under such circumstances as would afford a defense to a charge of crime;

(c) "pathological intoxication" means intoxication grossly excessive in degree, given the amount of the intoxicant, to which the actor does not know he is susceptible.

PROPOSED NEW YORK PENAL LAW

Section 45.10 Effect of intoxication upon culpability

1. Except as provided in subdivision two of this section, voluntary intoxication is a defense to a criminal charge for an offense if it negatives the culpable mental state required for the commission of the offense.

2. When recklessness is an element of an offense, if the actor, as a result of voluntary intoxication, is unaware of a risk, such unawareness does not negative the mental state of recklessness if he would have been aware of such risk had he not been intoxicated.

NEW YORK REVISED PENAL LAW

Section 15.25 Effect of intoxication upon liability

Intoxication is not, as such, a defense to a criminal charge; but in any prosecution for an offense, evidence of intoxication of the defendant may be offered by the defendant whenever it is relevant to negative an element of the crime charged.

ILLINOIS CRIMINAL CODE OF 1961

Section 6-3. Intoxicated or Drugged Condition

A person who is in an intoxicated or drugged condition is criminally responsible for conduct unless such condition either:

(a) Negatives the existence of a mental state which is an element of the offense; or

(b) Is involuntarily produced and deprives him of substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

Section 520. Duress; Compulsion

In a prosecution for any offense:

(1) it is an affirmative defense that the defendant engaged in the conduct otherwise constituting the offense because he was coerced into doing so by the threatened use of unlawful force against his person or the person of another in circumstances where a person of reasonable firmness in his situation would not have done otherwise;

(2) it is an affirmative defense that the defendant engaged in the conduct otherwise constituting the offense in order to avoid death or great bodily harm to himself or another in circumstances where a person of reasonable firmness in his situation would not have done otherwise.

(3) The defenses defined in this section are not available [if the offense is murder, nor] to a person who placed himself intentionally, knowingly or recklessly in a situation in which it was probable that he would be subjected to duress or compulsion.

COMMENT

Section 520. Duress; Compulsion

Introduction. Statutory and case law on the broad issue of necessity and duress as defenses to conduct which would otherwise be criminal often confuse several distinguishable kinds of situations. One situation is that in which, though the defendant literally violated the criminal law, his doing so can properly be regarded as justifiable. This is the case in which his action involved the choice of the lesser of two social evils—a mountaineer, for example, who severs a connecting rope and thereby saves the life of several by accelerating the death of one. This kind of situation is dealt with in Division 6, General Principles of Justification. It is comparable to the defense to be found in the Model Penal Code under the heading, "Justification Generally: Choice of Evils." To be distinguished from that class of cases is that in which it cannot be said that the defendant was actually justified in acting as he did because the harm or evil he created by violating the criminal law was equal to or greater than

the harm or evil that would have resulted if he had not so acted. In some cases of this kind there is ground in present law and in principle for recognizing a defense. The ground, however, is not justification, but excuse. These are the situations in which the terms "necessity" and "duress," to be found in case and statute law, appear to be properly applicable. The purpose of Section 520 is to formulate a principle of excuse in these cases.

The basic principle should be based upon the premise that where the circumstances in which the crime is committed are such that the judgment of fair-minded men would be that more could not reasonably be demanded of the normally law-abiding citizen, the criminal sanction is inappropriate. Any higher standard would not only be unfair to the person faced with the dilemma of choice under the coercive effect of pressure which other reasonable and normal members of the community would be unable to withstand, it would be unenforceable. Conduct which results from a level of intimidation high enough to affect most others in the same situation is simply not voluntary in any meaningful sense of the term.

There are two situations in which cases of this kind may arise. The first is where the defendant acts under the threat of another. These are the cases traditionally treated as cases of "duress." The other is that in which the compelling circumstances are produced by natural causes and events. These cases are often treated as cases of "necessity."

Duress. The defense of duress has its logical roots in the principle that criminal liability should not be imposed for an involuntary act or omission. Conduct that is compelled is not the result of the voluntary choice of the actor, hence neither moral nor legal responsibility should attach to it. From these propositions it follows that whenever compulsion overcomes the will of the actor, this conduct is involuntary and the defense is established. The law, however, adds qualifications by which the scales are weighted against the defense and which, in some situations, excludes it entirely.

These qualifications flow from concepts of moral responsibility to resist the compulsion of another to commit a crime, from the application of standards for the

determination of the "choice of evils" and from the practical necessity for judging conduct by objective standards.

The comment to the Model Penal Code draft on duress (*Tentative Draft No. 10,* p. 2) identifies four major issues pertinent to the application of the foregoing qualifications in statutory definitions of the defense:

1. To what crimes should the defense apply?
2. What force or what threats of force suffice to establish the defense?
3. Must the threatened harm be immediate or imminent?
4. Does a reasonable belief in the existence of the required threat suffice to establish the defense?

Typically, state statutes preclude the defense in capital cases; define the threats to be of great bodily harm or death; and require them to be of an immediate, imminent or continuing character. Case law is to the same effect.

In summary, the defense of duress is hedged about with limitations and looked upon with disfavor. Court decisions seldom address themselves to the question: was the action of the accused truly involuntary? For the most part they examine the evidence adduced to support the defense with a critical eye and find it without evidentiary support.

The California Law. The California statute is and has remained unchanged since its original enactment. *Penal Code Section 26* provides:

> "All persons are capable of committing crimes except those belonging to the following classes:
>
> . . . . .
>
> Eight—Persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to and did believe their lives would be endangered if they refused."

Reported cases in which the section has been considered are about fifteen in number, thus reflecting the infrequency with which the defense of duress is employed. Of these, approximately half are sex offense cases that treat the subject indirectly through its application to

questions of the status of complaining witnesses as victims or accomplices. Almost all of the others are robbery cases in which one of two or more defendants has alleged that his participation was compelled.

The two classes of cases have not been consistent in defining duress. The sex offense cases hold that victim-participant's fear of bodily harm is sufficient to constitute duress (thus dispensing with requirements for corroboration). The others adhere more strictly to the statutory language and require fear of death. Mr. Justice Tobriner in *People v. Otis,* 174 Cal. App. 2d 119, 344 P. 2d 342 (1959) expressed doubt about the psychological validity of these legal distinctions or classifications of fear but did not pursue the matter further because he concluded that the evidence showed no immediate threat, a common requirement for both lines of cases.

Subsection (1) of the draft is substantially the same as the provisions of *Section 209 of the Model Penal Code* (see Appendix, p. 55). It differs from *Penal Code Section 26* by its inclusion of coercion directed against the person of another in order to make explicit provision for the not infrequent cases where threatened harm to members of an individual's family are used in order to compel him to assist in the commission of a crime. It seems obvious that the manager of a business enterprise who has been compelled to open the safe for the robber on threats of injury to his wife and children is just as thoroughly coerced as if the threats were made only to him.

The measure of resistance is stated in the terms of the Model Penal Code's standard of "a person of reasonable firmness." (Compare "ordinary firmness," *State v. Crow,* 23 N.C. 297 (1841); Texas Penal Code, Art. 38 (1948).) This is substantially the same as the "reasonable cause" standard in *Penal Code Section 26* but it is expressed in terms which make it more clearly apparent that the person subjected to threats, although he is not called upon to be a hero, must not yield too readily to a choice of non-resistance.

Necessity (coercion by physical forces). Subsection (2) of the draft states the defense of necessity. The subject has not been dealt with in the Penal Code and there is little discussion of it in the cases. It is not provided for

specifically in the Model Penal Code since the defense is considered by its draftsmen to be treated adequately by the provisions of *Section 3.02* which defines a general defense where the actor believes his conduct necessary to avoid an evil to himself or to another. The New York Penal Law follows the same pattern but both Wisconsin and Illinois (see Appendices, pp. 46, 47) endeavor to make explicit provision for this kind of coercion.

Since men may be coerced to act by the pressure of natural forces as well as by threats of other persons, any comprehensive statement of the law which does not treat this situation is incomplete. In principle, it is not possible to distinguish conduct which is compelled by threats from that which is equally compelled by physical circumstances or the forces of nature. It may be granted that there are few occasions which will give rise to this defense but the law should take cognizance of the proposition that if a person engages in unlawful conduct because of a sincere and reasonable belief that his life is at stake, his action is excusable.

Few cases analyze or even discuss the defense of necessity because situations giving rise to it are rare and, as Hall notes, law enforcement officers do not prosecute when unlawful conduct is clearly the product of compulsion by natural forces. This is certainly true where a greater social value is preserved at the expense of a lesser one as in the case of jettisoning cargo in order to save a vessel. The problem becomes more difficult when the values involved are equal or where the harm caused is greater than the value saved. Consider for example, the pilot who bails out of his aircraft when its engine fails over an urban area in circumstances where the crash of the unguided plane is certain to cause loss of life, personal injury and great damage to property. We may not admire his failure to remain at the controls in a desperate endeavor to crash in some open place but we do not regard him as one who should be subjected to a criminal sanction.

It is the purpose of Section 520(2) to articulate the excusable nature of such coerced conduct and to provide a standard by which the action of persons may be evaluated who, without fault of their own, find themselves in circumstances of necessity.

Defenses Precluded. Subsection (3) of the draft precludes the defense when the actor intentionally or recklessly involves himself in a situation in which it may be expected that he will be subjected to coercion. *Model Penal Code Section 2.09* excludes the defense even in cases where the person is negligent in becoming involved. This seems to go too far in its extension of culpability where in point of fact the person involved is not engaging in voluntary conduct. Intentional or reckless behavior is another matter; one who acts knowing that he is placing himself in danger or knowing of a grave risk of danger, is clearly blameworthy.

The defense may also be excluded in cases of murder. This option is provided for in the bracketed words in Subsection (3).

APPENDIX

MODEL PENAL CODE

Proposed Official Draft

Section 2.09. Duress

(1) It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.

(2) The defense provided by this Section is unavailable if the actor recklessly placed himself in a situation in which it was probable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

(3) It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under this Section. [The presumption that a woman, acting in the presence of her husband, is coerced is abolished.]

(4) When the conduct of the actor would otherwise be justifiable under Section 3.02, this Section does not preclude such defense.

NEW YORK REVISED PENAL LAW (1967)

Section 35.35 Duress

1. In any prosecution for an offense, it is an affirmative defense that the defendant engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would have been unable to resist.

2. The defense of duress as defined in subdivision one of this section is not available when a person intention-

ally or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

ILLINOIS CRIMINAL CODE OF 1961

Section 7-11. Compulsion

(a) A person is not guilty of an offense, other than an offense punishable with death, by reason of conduct which he performs under the compulsion of threat or menace of the imminent infliction of death or great bodily harm, if he reasonably believes death or great bodily harm will be inflicted upon him if he does not perform such conduct.

(b) A married woman is not entitled, by reason of the presence of her husband, to any presumption of compulsion, or to any defense of compulsion except that stated in Subsection (a).

WISCONSIN CRIMINAL CODE

Section 939.46 Coercion

(1) A threat by a person other than the actor's co-conspirator which causes the actor reasonably to believe that his act is the only means of preventing imminent death or great bodily harm to himself or another and which causes him so to act is a defense to a prosecution for any crime based on that act except that if the prosecution is for murder the degree of the crime is reduced to manslaughter.

(2) It is no defense to a prosecution of a married woman that the alleged crime was committed by command of her husband nor is there any presumption of coercion when a crime is committed by a married woman in the presence of her husband. Married women shall be judged according to the standard set out in sub. (1).

Section 939.47 Necessity

Pressure of natural physical forces which causes the actor reasonably to believe that his act is the only means of preventing imminent public disaster, or imminent death or great bodily harm to himself or another and which causes him so to act, is a defense to a prosecution for any crime based on that act except that if the prose-

cution is for murder the degree of the crime is reduced to manslaughter.

ILLINOIS CRIMINAL CODE OF 1961

Section 7-13. Necessity

Conduct which would otherwise be an offense is justifiable by reason of necessity if the accused was without blame in occasioning or developing the situation and reasonably believed such conduct was necessary to avoid a public or private injury greater than the injury which might reasonably result from his own conduct.

Section 550. Entrapment

(1) A person may not be convicted of an offense if he has been entrapped to commit it. A person is entrapped to commit an offense if a public officer or a person acting in cooperation with a public officer induces or encourages him to engage in criminal conduct, when the methods of inducement are such as to create a substantial risk that the offense would be committed by persons other than those who are ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

[Alternate (1) A person may not be convicted of an offense if he has been entrapped to commit it. A person is entrapped to commit an offense if a public officer or a person acting in cooperation with a public officer induces or encourages him to engage in conduct constituting the offense. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.]

[(2) If, after the close of the prosecution's case, the court is satisfied that the defense of entrapment has been established, it shall grant a judgment of acquittal. Evidence of a defendant's prior convictions is inadmissible on the issue of entrapment.]

COMMENT

Section 550. Entrapment

The principal problem in formulating an entrapment defense is to decide upon its rationale. Although there is almost total agreement that there should be a defense of entrapment, there is sharp disagreement with respect to the basis of the defense and the appropriate standard. The two principal positions are represented by the split in the Supreme Court of the United States in the two leading cases of that court, *Sherman v. United States,* 356 U.S. 369 (1958), and *Sorrells v. United States,* 287 U.S. 435 (1932). In each of these two cases, the majority of the Supreme Court held that entrapment was a de-

fense as a result of statutory interpretation, while the minority maintained that entrapment was based on the power of the courts to protect the integrity of the judicial or law enforcement process. Under the logic and rationale of the majority, it was concluded that the appropriate standard was whether the police methods had been such as to induce the particular defendant to commit the offense, when he was "not otherwise disposed to violate the law." The minority would have applied the standard whether the police methods were such as to "create a substantial risk that the offense will be committed by persons other than those who are ready to commit it."

The basic difference between the two positions is the reliance upon the defendant's own tendencies. Under the majority standard, this is the key issue. Under the minority, the defendant's tendencies are irrelevant; the police conduct is the key question.

Present California law is stated in *People v. Benford,* 53 Cal. 2d 1, 345 P.2d 928 (1959), and appears to have some roots in both positions. Thus, at one point, the court referred, as its basis, to "sound public policy" and "good morals" and to the minority opinions in *Sherman* and *Sorrells.* On the other hand, it stated that "at least as much emphasis [is placed] on the susceptibility of the defendant as on the propriety of the methods of the police." (*Id.,* pp. 9–10.)

Subsection (1) states the "minority" rule, which not only finds some support in California law but is also the solution of *The American Law Institute (Proposed Official Draft Section 2.13)* and of the new *New York Revised Penal Law (Section 35.40).*

Under this proposal, what is to be evaluated in an entrapment defense is the conduct of the police officer or those acting for him.

A very slight inducement, such as merely affording an opportunity to commit the offense, will normally result in its commission by those who "are disposed to commit it." In this category could be placed, for example, a dispenser of narcotics who will sell to anyone who pays his price, so long as he is not a law enforcement officer. For a police officer to pretend he is not a police officer in these circumstances might, by some, be considered "en-

trapment" or at least misrepresentation. The proposed draft would clearly not prohibit such police conduct.

The difficult question is to describe the class of persons, whose crime-resistant propensities should be the measure for an entrapment formulation. Manifestly, they range from the class immediately outside those who "are disposed to commit" the offense to the "law-abiding citizen," for whom only the most strenuous and urgent importunings may lead to the commission of an offense. It is the purpose of the draft to set as the measure, not the hypothetical law-abiding citizen just described but, that group, which, while not "disposed to commit the offense," is the most susceptible.

Entrapment practices are most likely to be directed at those who are susceptible but not already disposed at the time of the event, rather than at the citizen of strong law-abiding habits. It is this former group which probably needs the most protection from the entrapment practice, and this is the group on whose propensities the standard is based.

Alternate (1) presents the opposing view, that adopted by the majority of the Supreme Court of the United States in the *Sherman* and *Sorrells* cases, *supra,* and by *Illinois (Rev. Stat. 7-12).*

Under this alternative, the focus is upon the defendant's own tendencies or susceptibility; the police methods employed in inducing the conduct are not the center of the inquiry.

Subsection (2) is tentatively proposed at this time. Procedural in nature, it does not necessarily belong in this substantive part. It is included at this time as an expression and an example of a more general procedural policy, *i.e.,* permitting a judgment of acquittal by the trial court at the close of the prosecution's case*. The entrapment practice seems clearly appropriate for this category. The last sentence of Subsection (2) dealing with evidence of a defendant's prior convictions, is technically and literally unnecessary under Subsection (1). If the referent for the conduct of the police officer is that of a hypothetical "not otherwise disposed" person, the defendant's own propensity should be immaterial to the issue. However, out of an abundance of caution resulting from the history of the

* This procedure was adopted after the comment was written. See *Penal Code Secs. 1118, 1118.1, 1118.2,* added 1967.

defense in other jurisdictions, the sentence has been included to assure that such evidence is inadmissible.

Under Alternate (1), prior convictions of the defendant for similar offenses would be relevant to the issue of his tendencies or susceptibility to commit the offense at the time of the alleged entrapment. However, the prejudicial effect of such evidence is so great as to outweigh the desirability of admitting such probative evidence on the issue.

What is intended under both Subsection (1) and Alternate (1) is that the prosecution should not be permitted to introduce in its case the defendant's particular propensities, whether through the means of prior criminal convictions, civil commitments or like matters. It is possible, of course, that such matters may be material or admissible on a theory of impeachment of a defendant when he takes the stand. This makes it important that the trial court evaluate the defense of entrapment independently before he puts the case to the jury. It also does not preclude the defendant from introducing such evidence as to his propensity in his own defense in the event that he thinks that this is relevant to the issues in the case. Significantly, despite the present California law with respect to the theory and standard of the defense of entrapment, evidence of prior convictions for the same type of offense as that with which the defendant is charged is inadmissible on the issue of his disposition at the time of the alleged entrapment. *People v. Benford,* 53 Cal.2d, at 11-12.

DIVISION 10. CRIMES AGAINST LIFE AND SECURITY OF PERSON

Chapter 3. Security of Person

Section 1530. Aggravated Kidnapping

(1) A person is guilty of aggravated kidnapping if by force, threat or deception, he confines or removes another with intent to hold him for ransom or reward.

(2) Aggravated kidnapping is a felony of the first degree unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree.

Section 1531. Kidnapping

(1) A person is guilty of kidnapping if he

(a) knowingly restrains another unlawfully in circumstances which expose him to risk of serious bodily injury; or

(b) knowingly holds another in involuntary servitude; or

(c) commits the crime of custodial interference, as defined in Section 1532,

(i) in circumstances manifesting a reckless disregard of the likelihood that his conduct will cause serious alarm for the health or safety of the child, incompetent or other person; or

(ii) by removing the child, incompetent or other person to another state or country.

(2) Kidnapping is a felony of the third degree.

Section 1532. Custodial Interference

(1) A person, whether a parent or other, is guilty of custodial interference if, without good cause, he takes, entices, conceals or detains a child under the age of [16] from his parent, guardian or other lawful custodian,

(a) knowing that he has no legal right to do so; and

(b) with intent to hold the child for a protracted period or for a period substantially longer than that

which a visitation or custody award of any court may allow.

(2) A person, whether a parent or other, is guilty of custodial interference, if, having actual physical custody of a child under the age of [16] pursuant to a judicial award of any court, which grants to another person visitation or custody rights, and without good cause he conceals or detains the child with intent to deprive the other person of his lawful visitation or custody rights.

(3) A person is guilty of custodial interference if, without good cause, he takes, entices, conceals or detains an incompetent or other person who has been committed by authority of law to the custody of another person or institution, from such other person or institution,

(a) knowing that he has no legal right to do so; and

(b) with intent to hold the incompetent or other person for a protracted period.

(4) Custodial interference is a misdemeanor.

Section 1533. Criminal Intimidation

(1) A person is guilty of criminal intimidation if he knowingly compels or induces another to do an act which he has a legal privilege not to do or to refrain from doing an act which he has a legal privilege to do by threatening to:

(a) commit any criminal offense; or

(b) accuse anyone of a criminal offense; or

(c) expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business repute; or

(d) take or withhold action as an official or to cause an official to take or withhold action.

(2) Criminal intimidation is a misdemeanor.

COMMENT

Chapter 3. Security of Person

This draft proposes a major change in the California law of kidnapping and related offenses. Its general structure is to establish a very narrowly defined offense of aggravated kidnapping, a felony of the first or second degree, requiring an intention to hold the victim for

ransom or reward. A series of "lesser" offenses makes up the remainder of the draft. These include kidnapping, a felony on the third degree, which can be committed in several different ways; custodial interference, a misdemeanor, which is directed at the interference with the custody of a child or incompetent; and criminal intimidation, a misdemeanor, which generally proscribes forcing another to engage in activity which he has a lawful privilege not to do. The proposal omits the crime of unlawful or false imprisonment.

Section 1530. Aggravated Kidnapping

(a) **Penal Code Section 207** has been interpreted so as to make it possible for one to be convicted of kidnapping where his only purpose has been to seize or move the victim, or, at least, has not been "lawful," see, *e.g., People v. Bruno,* 49 Cal. App. 372, 193 Pac. 511 (1920), and where the movement can be best characterized as minimal. See, *e.g., People v. Wein,* 50 Cal. 2d 383, 326 P.2d 457 (1958); *People v. Chessman,* 38 Cal. 2d 166, 238 P.2d 1001 (1951). Under *Penal Code Section 209,* the penalty may be aggravated to capital punishment or life imprisonment without possibility of parole, if the kidnapping occurs during a robbery or is accomplished for the purposes of ransom and the victim suffers some harm. Where the victim suffers no harm, the penalty can be life imprisonment with possibility of parole.

Proposed Section 1530 substantially limits the circumstances in which the most serious punishment may be imposed to cases where the movement or confinement of the victim has been for the purpose of obtaining a ransom or reward. As such, it excludes asportation or confinement of victims for other felonious purposes, such as robbery and rape. The rationale of the proposal is to treat the latter conduct under the criminal provisions treating those offenses, *i.e.,* robbery or rape or attempts to commit those crimes. So, too, using a victim as a shield or hostage in the course of the commission of an attempt to flee from the site of a felony should be treated, if at all, as aggravations of those offenses and not as independent offenses. The assumption of the proposal is that the possibly fortuitous circumstance of movement of the victim should not serve to multiply the number of offenses

with which the defendant may be charged. As such, the proposal is not only substantially different from present California law, but also has a lesser scope than that in other proposed formulations. For example, the Proposed Official Draft of The American Law Institute's Model Penal Code includes among prohibited purposes, not only those contained in proposed Section 1530, but also such matters as the facilitation of a felony or flight thereafter, infliction of bodily injury or terrorization, or interference with the performance of a governmental or political function. *Model Penal Code, Proposed Official Draft, Section 212.1.* (See Appendix p. 59.) Section 1530 would leave to the scope of the other substantive crimes the treatment of those kinds of conduct.

(b) Mitigation of the penalty where the victim is returned unharmed is consistent with present California law (*Section 209* imposes a higher penalty where the victim is harmed than where he is unharmed) and with other codes. The rationale, of course, is to hold out mitigation to the offender so that he will not be tempted to kill the principal witness against him, *i.e.,* the victim, on the theory that he can be punished no more severely for the homicide than for the aggravated kidnapping.

Section 1531. Kidnapping

Proposed Section 1531 establishes the crime of kidnapping as a felony of the third degree. It may be committed in any of three ways: (a) reckless restraint of another in circumstances which expose him to risk of serious bodily injury; (b) holding another in involuntary servitude; or (c) committing the crime of custodial interference (defined in Section 1532) in circumstances where the actor manifests a reckless disregard of the likelihood that serious alarm for the health or safety of the victim of the custodial interference will be raised.

(a) Reckless restraint of another unlawfully in circumstances which expose him to risk of serious bodily injury requires no ulterior motive or purpose. The gravamen of this offense is the restraint of the victim, similar to present *Penal Code Section 207,* but with the rationale that it is the possibility of serious bodily injury which is the legitimate subject of the felony characterization. Theoretically, this type of conduct might be included

under the assault sequence of crimes; however, the traditional revulsion to coerced transportation or confinement appears to justify separate treatment. This definition may well cover conduct which normally takes place during the commission of other offenses. However, the prevailing interpretation of *California Penal Code Section 654* precludes punishment for both offenses and the other felonies may, in any event, carry heavier penalties than kidnapping.

(b) Knowingly holding another in involuntary servitude is now made punishable by imprisonment up to ten years by *Penal Code Section 181.* Classification as a felony of the third degree would appear to make no major change in the law.

(c) Kidnapping also includes what might be described as aggravated custodial interference. It includes not only child stealing, now treated in *Penal Code Section 278*—and punishable for a maximum of twenty years—but also those custodial interferences, described below, which may occur in a custody fight between estranged spouses. The removal of the victim from the state justifies classification of this offense, otherwise a misdemeanor, as a felony of the third degree both because of the difficulty of recovering the victim in these circumstances and the availability of extradition processes for felons.

Section 1532. Custodial Interference

Section 1532 is based on present *Penal Code Section 278.* (See Appendix, p. 59.) It is directed toward the violation of custody rights over a child or incompetent and includes the conduct of parents or others. Because relatively minor interferences are not intended to be included, the proposal requires that there be an intention to hold the child or incompetent for a protracted period or for a period substantially longer than a custody or visitation award allows. Because this offense is likely to be committed by estranged spouses who are dissatisfied with a custody decree, there is some support for the position that the contempt process should suffice. The choice has been to denominate the conduct as criminal, albeit a misdemeanor, so as to make available to the victimized spouse the apparatus of the criminal enforcement system.

Section 1533. Criminal Intimidation

Section 1533, criminal intimidation, is an attempt to generalize a type of behavior—threats—which is now treated in various places in the California Penal Code, as, for example, extortion and its variants (*Penal Code Sections 257, 518–524, 526*); abduction for marriage or defilement (*Penal Code Section 265*); compelling illicit relations (*Penal Code Section 266b*); prostituting a wife (*Penal Code Section 266g*). (See also *Penal Code Sections 311.7, 2947, 4503; Labor Code Sections 450, 922, 1102; Government Code Section 8403; Health and Safety Code Section 35720.*)

The solution presented by proposed Section 1533 classifies as a misdemeanor any threat designed to force a victim to do something which he has a legal privilege not to do or to refrain from doing something which he has a legal privilege to do. Not included is a threat for harassment or for threat's sake only. This will be treated in another provision.

Because of the wide range of conduct which is covered by the proposed section, it is logically possible to place proposed Section 1533 in an extortion or theft sequence, an assault sequence, or, as here, in a kidnapping sequence. The recommended inclusion in the kidnapping sequence is tentative only, and will be reconsidered when these other sequences are drafted.

Note: Unlawful or False Imprisonment

The proposed draft does not include a crime of unlawful or false imprisonment, thus making it different from present California law. *Penal Code Section 236* is a typical false imprisonment statute ("the unlawful violation of the personal liberty of another") and *Penal Code Section 237* aggravates the crime where it is effected by violence, menace, fraud or deceit. Proposed Section 1531(1)(a) covers a substantial part of the aggravated conduct proscribed in present *Section 237*, but there is no simple false imprisonment statute.

The vague contours of a typical false imprisonment statute give rise to substantial possibilities of abuse. In fact, there is remarkably little case law in California on its scope. There is only a handful of reported appellate criminal cases. The availability of civil remedies for

those who deem their personal liberty to have been violated in non-violent circumstances seems to have proved adequate.

The conclusion of the draftsmen is not to bring this conduct within a penal code, although it is recognized that this resolution is not one which has been adopted in other modern criminal codes. See, *e.g., Model Penal Code, Proposed Official Draft, Section 212.3.* (See Appendix, p. 60.)

Appendix

MODEL PENAL CODE

Proposed Official Draft

Section 212.1. Kidnapping

A person is guilty of kidnapping if he unlawfully removes another from his place of residence or business, or a substantial distance from the vicinity where he is found, or if he unlawfully confines another for a substantial period in a place of isolation, with any of the following purposes:

(a) to hold for ransom or reward, or as a shield or hostage; or

(b) to facilitate commission of any felony or flight thereafter; or

(c) to inflict bodily injury on or to terrorize the victim or another; or

(d) to interfere with the performance of any governmental or political function.

Kidnapping is a felony of the first degree unless the actor voluntarily releases the victim alive and in a safe place prior to trial, in which case it is a felony of the second degree. A removal or confinement is unlawful within the meaning of this Section if it is accomplished by force, threat or deception, or, in the case of a person who is under the age of 14 or incompetent, if it is accomplished without the consent of a parent, guardian or other person responsible for general supervision of his welfare.

California Penal Code

Section 278. Enticing Minor from Home

Every person who maliciously, forcibly, or fraudulently takes or entices away any minor child with intent to detain and conceal such child from its parent, guardian, or other person having the lawful charge of such child, is punishable by imprisonment in the state prison not exceeding twenty years.

MODEL PENAL CODE

Proposed Official Draft

Section 212.3. False Imprisonment

A person commits a misdemeanor if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.

DIVISION 11. CRIMES AGAINST SEXUAL MORALITY, PUBLIC DECENCY, AND THE FAMILY

Chapter 1. Sexual Offenses

Section 1600. Definitions and Other General Provisions

(1) "Sexual intercourse" has its ordinary meaning and occurs upon penetration, however slight.

(2) "Deviate sexual intercourse" means sexual conduct consisting of contact between the penis and the anus, the mouth and the penis, or the mouth and the vulva.

(3) "Sexual contact" means any touching of the sexual or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of any person.

(4) Whenever in this chapter the criminality of conduct depends on a child's being below the age of fourteen, it is no defense that the actor reasonably believed the child to be fourteen or older. Whenever in this chapter the criminality of conduct depends on a child's being below a specified age older than fourteen it is an affirmative defense that the actor reasonably believed the child to be of that age or above.

(5) Whenever in this chapter the definition of an offense excludes conduct with a spouse, the exclusion shall extend to persons over the age of eighteen living together in a state of cohabitation, regardless of the legal status of their relationship, but shall not extend to spouses living apart under a judicial decree of separation.

Section 1601. Aggravated Rape

A male who has sexual intercourse with a female not his wife is guilty of aggravated rape if:

(1) he compels her to submit by force or by threat of imminent death, serious bodily injury or kidnapping, to be inflicted on her or on any other person; or

(2) the female is less than fourteen years old.

Aggravated rape is a felony of the first degree if in the course thereof the actor inflicts serious bodily injury

on his victim or if his conduct violates both Subsection (1) and Subsection (2) of this section. Otherwise, aggravated rape is a felony of the second degree.

Section 1602. Rape

A male who has sexual intercourse with a female not his wife commits rape if:

(1) he knows the female is unconscious; or
(2) he has substantially impaired her power to appraise or control her conduct by administering without her knowledge drugs or similar means for the purpose of preventing resistance; or
(3) he knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct; or
(4) he knows that she is unaware of the sexual nature of the act being committed upon her; or
(5) he compels her to submit by any threat that he knows would be likely to prevent resistance by a woman of ordinary resolution.

Rape is a felony of the third degree.

Section 1603. Aggravated Sodomy

A person who has deviate sexual intercourse with another person, whether of the same or the opposite sex, not his spouse commits aggravated sodomy if:

(1) he compels the other person to submit by force or by threat of imminent death, serious bodily injury, or kidnapping to be inflicted on him or on any other person; or
(2) the other person is less than fourteen years old.

Aggravated sodomy is a felony of the first degree if in the course thereof the actor inflicts serious bodily injury on his victim or if his conduct violates both Subsection (1) and Subsection (2) of this section. Otherwise, aggravated sodomy is a felony of the second degree.

Section 1604. Sodomy

A person who has deviate sexual intercourse with another person, whether of the same or the opposite sex, not his spouse commits sodomy if:

(1) he knows the other person is unconscious; or
(2) he has substantially impaired the other person's power to appraise or control his conduct by administering without his knowledge drugs or similar means for the purpose of preventing resistance; or
(3) he knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct; or
(4) he knows that the other person is unaware of the sexual nature of the act being committed upon him; or
(5) he compels the other person to submit by any threat that he knows would be likely to prevent resistance by a person of ordinary resolution.

Sodomy is a felony of the third degree.

Section 1605. Corruption of Minors

A male who has sexual intercourse with a female not his wife or any person who engages in deviate sexual intercourse with a person, whether of the same or the opposite sex, not his spouse is guilty of a felony of the third degree if the other person is less than eighteen years old and the actor is not less than three years older than the other person.

Section 1606. Custodial Imposition

A male who has sexual intercourse with a female not his wife or any person who engages in deviate sexual intercourse with a person, whether of the same or the opposite sex, not his spouse is guilty of a felony of the third degree if the other person is in custody of law or detained by authority of law in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

Section 1607. Sexual Misconduct

A person who intentionally subjects another person, whether of the same or the opposite sex, not his spouse to any sexual contact is guilty of sexual misconduct if:

(1) the other person does not consent to the contact; or
(2) he knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of the contact involved; or

(3) he knows that the other person is unaware that a sexual act is being committed; or

(4) he has substantially impaired the other person's power to appraise or control his conduct by administering without his knowledge drugs or similar means to prevent resistance; or

(5) the other person is less than fourteen years old; or

(6) the other person is less than eighteen years old and the actor is not less than three years older than the other person; or

(7) the other person is in custody of law or detained by authority of law in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

Section 1608. Grading of Sexual Misconduct

(1) Sexual misconduct is a felony of the first degree if the victim is less than fourteen years old and the actor compels the victim to submit by force or by threat of imminent death, serious bodily injury or kidnapping, to be inflicted on anyone.

(2) Sexual misconduct is a felony of the second degree if in the course thereof the actor inflicts serious bodily injury on his victim.

(3) Sexual misconduct is a felony of the third degree if the victim is less than fourteen years old.

(4) Sexual misconduct is otherwise a misdemeanor.

Section 1609. Indecent Exposure

A person commits a misdemeanor if, for the purpose of arousing or gratifying the sexual desire of any person, including the actor, he exposes his genitals or performs any other lewd act under circumstances in which his conduct is likely to be observed by any person who would be offended or alarmed.

Section 1610. Loitering to Solicit Sexual Contact

A person is guilty of a petty misdemeanor if he loiters in or near any public place for the purpose of soliciting or being solicited to engage in sexual contact under circumstances in which his conduct is likely to cause offense to other persons.

COMMENT

Chapter 1. Sexual Offenses

1. **Present Law.** The offenses defined in this chapter involve conduct presently treated in the following provisions of the Penal Code:

Sections 261–264	Rape
Section 286	Sodomy
Section 288	Lewd Acts with Children
Section 688a	Oral Copulation
Section 647a	Disorderly Conduct

Penal Code Section 261 lumps together indiscriminately a wide variety of male sexual imposition on females, ranging from violence through various forms of deceit to victim immaturity. All of these disparate forms of "rape" are made punishable by an indeterminate sentence of three years–life except victim immaturity, which is an optional felony (1–50) or misdemeanor. *Penal Code Section 264.*

Penal Code Section 286 penalizes "the infamous crime against nature, committed with mankind or with any animal" as a felony with an indeterminate sentence of one year–life. It has been judicially defined as anal intercourse with human beings and as either vaginal or anal intercourse with animals. No distinctions are drawn as to relationship of parties, force or other imposition, etc.

Penal Code Section 288 is directed at sexual conduct involving children under fourteen. It deals indiscriminately with a wide range of conduct, from forcible rape to consensual sexual touching. The penalty is one year–life.

Penal Code Section 288a deals with oral-genital relations. Unlike *Penal Code Section 286,* it draws sentencing distinctions based on force and immaturity. The offense is punishable by a term of not more than fifteen years unless the victim is under fourteen or is forced to submit by threats or violence, in which case it is punishable by three years–life.

Penal Code Section 647a defines as a misdemeanor soliciting or engaging in "lewd and dissolute conduct in any public place or in any place open to the public or exposed to public view."

2. **General Approach of Draft.** A legislative attempt to rethink the area of sex offenses involves two major questions: (a) what kinds of conduct, engaged in under what circumstances, should be subject to criminal sanctions? (b) what distinctions can be usefully drawn for sentencing purposes among the various kinds of conduct so proscribed?

This draft views the prevention of force and other forms of gross imposition in securing sexual gratification and the protection of sexual innocence and immaturity as the prime values to be served by the criminal law in this area. It views the control of nuisance conduct that offends public decency as another important value. Beyond the protection of those values, the draft is extremely sparing in its resort to the criminal sanction for the prevention of undesirable sexual behavior. It rejects the dead-letter offense of adulterous cohabitation (*Penal Code Section 269a*). It severely restricts the scope of the offense commonly known as "statutory rape." And it treats "deviate" sexual relations, *i.e.,* male-female relations other than "normal" intercourse and relations of all sorts between persons of the same sex on a parity with "normal" sexual relations. The principal practical result is that, broadly speaking, sexual relations of all sorts between consenting adults carried on in private are excluded from the reach of the criminal law. A number of considerations combine to support this result:

(a) private consensual sexual conduct between adults is in fact almost never dealt with under current criminal law;

(b) the extreme difficulty of detecting such conduct conduces to unconstitutional police practices on the rare occasions when the law is invoked;

(c) rarity of enforcement creates an acute problem of arbitrary and discriminatory police and prosecutorial discretion;

(d) widespread knowledge that the law is violated with impunity by thousands every day creates disrespect for law generally;

(e) there is substantial evidence that the moral sense of the community no longer exerts strong pressure for the use of criminal sanctions in this area;

(f) the theoretical availability of criminal sanctions creates a situation in which extortion and, on occasion, police corruption may take place;

(g) there is no evidence that any of the accepted goals of criminal punishment is served by proscribing such conduct.

These considerations are extensively documented in an important recent empirical study, *The Consenting Adult Homosexual and the Law,* 13 U.C.L.A. L.Rev. 644 (1966).

These arguments will, of course, be assigned different weights by different people. The submission of this draft is that in combination they present a strong case for the result advocated. Absent any serious plea for energetic enforcement of present law against private consensual adult conduct, there seems to be only one argument for retention that need to be considered. That is the argument that removing conduct from the criminal law either necessarily implies or will be taken to express social approval of the conduct. It may be enough to say that we see no such implication and that the question ultimately is one of public acceptability, an issue that should be considered in the first instance by the Joint Legislative Committee.

It is important to note what this legislative proposal does *not* do. It does not remove the criminal sanction from deviant sexual conduct that involves force or threats, or that is practiced with minors, or that outrages public decency. Such conduct, which comprises the overwhelming majority of prosecutions for sexual deviation, will continue to be criminal. Nor does this proposal affect the availability of non-criminal sanctions. For example, disqualification from public employment as a teacher would continue to be available without reference to the commission of a crime. *Education Code Section 13129. Cf. Section 13130.*

3. **Structure of the Chapter.** Section 1600 contains definitional provisions applicable throughout the chapter. Sections 1601 and 1602 deal with "normal" sexual intercourse between males and females. Sections 1603 and 1604, which precisely parallel Sections 1601 and 1602,

deal with "deviate" sexual intercourse, regardless of the respective sexes of the participants. These provisions (Sections 1601–1604) are limited to situations involving force, threats, deceit, or extreme immaturity. Sections 1605 and 1606 deal with both "normal" and "deviate" intercourse that is consensual but where circumstances render the "consent" ineffectual: "statutory rape" and custodial imposition. Section 1607 deals with "sexual misconduct," *i.e.,* the entire range of sexual contacts short of "normal" and "deviate" intercourse. Section 1608 undertakes the task of grading sexual misconduct by criteria responsive to those embodied in Sections 1601–1604, *i.e.,* reserving the heaviest penalties for conduct involving violence or young children. Section 1609 deals with indecent exposure and other forms of open lewdness. Section 1610 deals with sexual solicitation.

The general structure of the chapter is similar to that of the *Model Penal Code (Article 213, Sexual Offenses),* although there are numerous important differences in the detailed provisions. The relevant provisions of the Model Penal Code and of present California law are reproduced in the Appendix.

4. **Definitions and other General Provisions.**

(a) **"Sexual intercourse"** and **"deviate sexual intercourse."** These definitions are substantially the same as those employed in the recent New York revision. *New York Revised Penal Law Section 130.00.* They are advanced in the interest of clarity. Latinisms ("per os" or "per anum") and euphemisms ("infamous crime against nature") have no place in a modern penal code.

(b) **"Sexual contact."** This definition is based on *Model Penal Code Section 213.4.* It embodies an unavoidable ambiguity in its reference to "sexual or other intimate parts." On the one hand, it seems undesirable to limit the term to contact with the organs of reproduction, which would exclude an univited fonding of a woman's breast from the scope of sexual misconduct. On the other hand, there is a wide variety of physical contact that may be thought to have an erotic component, as when a kindly old gentleman pats a small child's bottom. A definition that does not restrict the physical locus of the contact would appear to be undesirably broad. The reference to

"other intimate parts" is an attempt to steer a middle course between these undesirable extremes.

(c) **Mistake as to age.** Under the general mistake provisions of this code, which are not as yet drafted, it is contemplated that all mistakes which negate the actor's culpability with respect to any material element of the offense, as for example, a mistake as to age in the offense commonly known as "statutory rape," would serve to exculpate. Strictly speaking, then, a special provision as to mistake is unnecessary here. However, given the long tradition at common law that mistake as to the victim's age is not a defense, *e.g., Regina v. Prince,* 2 Cr. Cas. Res. 154 (1875), the special provision is included here out of an abundance of caution. In its principal application in this chapter, this provision simply codifies the rule of *People v. Hernandez,* 61 Cal. 2d 529, 39 Cal.Rptr. 361, 393 P. 2d 673 (1964). The word "reasonably" raises a technical issue of some difficulty. The question is what culpability requirement should be imposed with respect to the actor's mistaken belief as to the victim's age. If the word "reasonably" were not included, the general culpability provisions of the proposed code, Section 406, would require that his mistake be reckless, *i.e.,* that he realized there was a chance the victim was younger than he thought her. To put it another way, even if his mistake was one that involved negligence in the criminal sense, see Section 404(4), he would be excused if under the circumstances his belief was held in good faith. If, however, the word "reasonably" is included, good faith alone will not excuse. From the purist standpoint of classical *mens rea,* the belief should not have to be reasonable. As a practical matter, reasonableness is the standard that is likely to be applied by the trier of fact, whatever the articulated standard is. A jury is unlikely to consider a mistake as to age to have been made in good faith if it seems unreasonable. The Advisory Board's consensus was in favor of including a requirement of reasonableness, which has been done in the present draft. The Advisory Board was also of the view that mistake as to the age of a very young child should not be a defense.

The definition of the term "affirmative defense," which appears in this provision, has not yet been drafted. It is contemplated that the term will be used to refer to

defenses as to which the defense has the initial production burden but which, once that burden is carried, must then be negated by the prosecution beyond a reasonable doubt.

(d) **Spousal exclusion.** Throughout the chapter, conduct that would otherwise be criminal is made non-criminal if engaged in with a spouse. This follows existing law with respect to "normal" sexual intercourse and extends the same principle to "deviate" intercourse. The question remains who is to be treated as a "spouse" for this purpose. Following the lead of the *Model Penal Code, Section 213.6(2),* the exclusion extends to all who hold themselves out as living together in the sexual sense.

(e) **Prompt complaint.** Earlier versions of this draft included a provision requiring prompt complaint as a prerequisite to the prosecution of sexual offenses, *c.f., Model Penal Code, Section 213.6(5).* It is the present view of the Reporters that such a provision is undesirable but that the issue should be considered when statutes of limitations are drafted, keeping in mind the possibility of a relatively short statute of limitations for sex offenses.

(5) **Aggravated Rape.**

(a) **Sentencing gradations.** Section 1601 defines those situations of "normal" intercourse which call for the severest treatment. The draft treats intercourse by force or its equivalent or intercourse with a very young child as a second degree felony. Under the proposed sentencing structure of this code, a second degree felony is punishable by a sentence that will carry a maximum of ten years. The offense is aggravated to a felony of the first degree, punishable under the proposed sentencing structure by a maximum of life imprisonment, if the actor inflicts "serious bodily injury" on the victim or if force or its equivalent is used on a very young child.

These sentencing provisions are to be compared with present *Penal Code Sections 264 and 288,* both of which provide maxima of life imprisonment for a broad range of conduct involving, respectively, non-consensual intercourse and sexual contact with young children. It would be a mistake, however, to assume that treating the great

run of offenses under Section 1601 as second degree felonies, punishable by a maximum of ten years imprisonment, will result in less prison time being served by persons convicted of these offenses. In fact, the prison time actually served by offenders in these categories is much shorter than that, as is demonstrated by the following figures on time served in prison prior to first release on parole for prisoners released during 1962 and 1963:

Offense	*Penal Code Sec.*	*Statutory Sentence*	*Min. Eligible parole date (yrs.)*	*Time Served (years)* Median	*Middle 80%*	*Top 10%*	*Total number released*
1962							
Rape, violent	261.5–264	3–Life	1	3.8	2.5–7	7–12.5	56
Lewd acts with children under 14	288	1–Life	1	3	1.7–5.3	5.5–17.6	116
1963							
Rape, violent	261.3–264	3–Life	1	3.7	1.9–7	7.5–16.6	44
Lewd acts with children under 14	288	1–Life	1	3	1.6–6	6.2–22.7	115

As these figures show, no one in the middle 80% of those released had spent more than seven years in prison. And of those in the top 10%, detailed figures not reproduced here show that only 5 out of 34 served over ten years before first release on parole. Those held beyond ten years were presumably violent offenders who would be eligible for equally long terms under the sentencing structure proposed for this code.

(b) **Force or its equivalent.** All would agree that the use of force to compel sexual relations is uniformly serious. A more difficult problem arises when the coercion takes the form of a threat. Threats can range from instant death to trivial inconvenience. In Section 1601(1) certain very serious threats are assimilated to the actual use of force. Examples include placing a knife at a woman's throat, threatening to kill her boy friend, kidnap her child, etc. These threats, in the setting in which they occur, usually stamp the actor as one equally as dangerous as the man who uses physical force. Less serious threats are treated in Section 1602(3).

(c) **Intercourse with a very young girl.** The critical problem here is the determinative age. Every American

penal code treats the extreme immaturity of the child as a circumstance of aggravation, but they vary widely in their assessment of the determinative age or ages. The problem is of course related to the choice of age for the offense of "statutory rape."

The Model Penal Code and New York solutions compare with our proposed solution as follows:

	Age of Girl	*Maximum Sentence*
M.P.C.	Under 16	5 years
	Under 10	10 years
N.Y.	Under 17	4 years
	Under 14	7 years
	Under 11	25 years
Calif.	Under 18	5 years
Proposed	Under 14	10 years

The drafters of the Model Penal Code have advanced the following rationale for distinguishing offenses on the basis of age (*Tent. Draft No. 4,* p. 252):

> There appear to be three significant categories involving the age of the female: (1) pre-puberty victims with a considerable probability of aberration in the male aggressor, (2) the period of puberty, when the girl arrives at physical capacity to engage in intercourse, but remains seriously deficient in comprehension of the social, psychological, emotional and even physical significance of sexuality, so that it is still realistic to regard her as victimized, and (3) the period of later adolescence when the chief significance of the behavior is its contravention of the moral standards of the community.

The present draft takes the position that (1) and (2) present relevant bases for grading the criminality of intercourse with young girls. As is explained below, the draft proposes eighteen as the critical age for category (2), where the chief consideration is social and psychological immaturity. The chief factor in fixing a lower age for a more aggravated category appears to be the onset of puberty. Puberty is a process rather than an event, involving *inter alia* such manifestations as the appearance of pubic hair, the development of the breasts, and the beginning of menstruation. The median period for this process appears to be the age of twelve–thirteen See, *e.g.,* Kinsey, et al; *Sexual Behavior in the Human Female,* 123. The Model Penal Code opted for ten as the critical age "despite the indication that twelve is the

commonest age for the onset of puberty" on the ground that "it seems wise to go well outside the average or modal age, and it is known that significant numbers of girls enter the period of sexual awakening as early as the tenth year." The present draft puts the critical age at fourteen. In accordance with the Advisory Board's view, mistake as to age in the case of a child under fourteen is not a defense. *Cf.* Section 1600(4).

6. **Rape.** Section 1602 brings together a variety of situations in which the female's consent (or absence of non-consent) ought to be deemed legally ineffective. Subsections (1), (2), (4) and (5) are refinements of various subdivisions of *Penal Code Section 261* which do not appear to call for treatment on a parity with force or threats of force. Section 1602(3) goes beyond existing law to cover a wide range of threats, *e.g.,* loss of employment, exposure of a secret. It also serves as a lesser included offense for Section 1601(1), in cases where the trier of fact concludes that the female's submission was coerced but that the circumstances were not such as to warrant conviction of a second degree felony.

7. **Sodomy.** Sections 1603 and 1604, dealing with deviate sexual intercourse, precisely parallel Sections 1601 and 1602. That is to say, the same circumstances of force, threats, victim immaturity and other kinds of imposition that make "normal" sexual intercourse criminal are here used to deal with "deviate" sexual intercourse. The offense has been termed "sodomy," even though that term is technically inapposite, because "deviate sexual intercourse" is too cumbersome a term. For reasons elaborated earlier, consensual sodomy carried on in private by persons over eighteen is not treated as criminal. This is the pattern of the Model Penal Code, of the Illinois Revised Criminal Code and of the proposed Revised Penal Law of New York as recommended to the legislature by the Commission. The New York law was expanded by the legislature to make consensual sodomy between persons not married to each other a misdemeanor punishable by not more than three months imprisonment. *Section 130.38.* For the reasons previously stated, the Reporters and the Advisory Board do not favor such a provision.

8. "**Statutory Rape.**" Under Section 1605 "normal" or "deviate" intercourse with a person under the age of

eighteen is made an offense if the actor is not less than three years older than the victim. An age differential for this offense is provided by both the Illinois and New York revisions, following the pattern of the Model Penal Code. In view of the fact that this offense under *California Penal Code Section 261.1* is in practice ordinarily treated as a misdemeanor, absent aggravating circumstances which under this draft would put it under Sections 1601–1604, there is a question whether it should be classified as a third degree felony or as a misdemeanor. It is treated as a felony in this draft on the view that the conduct thus narrowly defined is quite serious. Broad power to reduce an offense from a felony to a misdemeanor is contemplated in the sentencing provisions.

9. **Custodial Imposition.** Under Section 1606 a new offense is created covering those situations in which a sheriff's deputy, a prison guard or an attendant in a state mental hospital abuses his position by having sexual relations with a person in his charge. This provision is based on *Model Penal Code Section 213.3(1)(c)*.

10. **Sexual Misconduct.**

(a) **In general.** The basic offense under Section 1607 is defined in Subsection (1). It consists of two elements: (a) intentional subjection of another person to sexual contact (as defined in Section 1600); (b) absence of consent. Under a sufficiently broad definition of "battery" *e.g.,* any unlawful "touching," it would in theory be unnecessary to provide a special offense dealing with sexual contact. However, it is contemplated that the "assault" and "battery" provisions of this revision will be more restrictive than that and will be limited to infliction, actual or attempted, of bodily injury. For that reason, and also because sexual contact poses special problems not found elsewhere in the criminal law, it seems desirable to provide for an offense of this nature which, under various names, is found in all of the recent decisions.

(b) **Culpability requirements.** The actor must intend to subject the other person to contact that the actor knows to be sexual contact, as defined in Section 1600(3).

The actor must be at least reckless as to the absence of consent. *Cf.* Section 406.

(c) **Varieties of sexual assault.** In addition to the general provision of Section 1606(1), intentionally subjecting another to sexual contact is an offense regardless of consent under a variety of circumstances paralleling "intercourse" offenses under Sections 1601–1606. Each of these Section 1607 offenses thus constitutes a lesser included offense within an "intercourse" offense as follows:

Section 1607(2)—Section 1602(3)
Section 1604(3)
Section 1607(3)—Section 1602(4)
Section 1604(4)
Section 1607(4)—Section 1602(2)
Section 1604(2)
Section 1607(5)—Section 1605
Section 1607(6)—Section 1606

This structure of lesser included offenses should facilitate the exercise of prosecutorial discretion and the process of plea negotiation.

(d) **Grading of sexual misconduct.** Sexual misconduct is graded as a misdemeanor except in those situations defined as Aggravated Rape or Aggravated Sodomy under Sections 1601 and 1603. Thus, if force or equivalent threats are used or if the victim is a child under fourteen, the offense is a felony of the second degree. If bodily injury is inflicted or if force is used on a child under the age of fourteen, the offense is a felony of the first degree. The rationale of these aggravated penalties is simply this: when these serious circumstances exist, whether the actor has "intercourse" or some other form of sexual contact is a fortuity that has no clear bearing on the severity of the appropriate punishment. It is only when these aggravating circumstances do not exist that the form that the sexual expression takes should provide a distinguishing basis for the penalty.

11. **Indecent Exposure.** There may be a question whether a provision such as Section 1609 belongs in the sexual offenses chapter or in provisions dealing with prostitution, obscenity and other forms of public indecency. Because conduct of this sort ordinarily has a sex-

ual gratification component, it seems *prima facie* plausible to locate the provision here. Section 1609 represents an amalgam of two provisions of the *Model Penal Code, Section 213.5, Indecent Exposure,* and *Section 251.1, Open Lewdness.* These provisions, which are reproduced in the Appendix, appear to be mutually duplicative and hence are here consolidated into a single provision. The gravamen of the offense is the likelihood of affront or alarm to others and the principal policy issue is the culpability requirement for this element of the offense. The Model Penal Code requires proof that the actor "*knows* his conduct is likely to cause affront or alarm." *New York (Section 245.00)* goes to the other extreme by providing simply that the offense is committed when the actor "intentionally . . . commits any . . . lewd act" in a "public place." The Model Penal Code formulation imposes a standard of proof that seems unnecessarily difficult. New York, on the other hand, makes it possible to reach conduct that does not in fact present a risk of affront or alarm, *e.g.,* a teen-age couple in a parked car on a "lover's lane." The draft steers a middle course, focusing the attention of the prosecutor and the trier of fact on whether, under the particular circumstances, there was a likelihood of affront or alarm.

12. **Loitering for Sexual Solicitation.** Like indecent exposure, there may be a question whether this offense belongs here or elsewhere in the proposed code. For the same reason advanced in Paragraph 11, it is tentatively proposed for inclusion here. The principal issue is whether solicitation to engage in sexual relations should be criminal if the ensuing relations would not be. It seems clear that the mere fact of solicitation should not be, given the prevalence of "propositioning" of one sort or another in our society. What appears to be a proper subject for criminal sanctions is the kind of nuisance behavior, particularly among homosexuals, that takes place in public thoroughfares, parks, etc. The provision as drafted is not limited to homosexual solicitation, in accordance with the general pattern of the chapter. While the provisions that will be drafted on solicitation for prostitution will cover most cases involving females, there may be some utility in a provision directed at "amateurs" as well.

Appendix

MODEL PENAL CODE
Proposed Official Draft

OFFENSES INVOLVING DANGER TO THE PERSON

ARTICLE 210. CRIMINAL HOMICIDE

Section 210.0. Definitions

In Articles 210–213, unless a different meaning plainly is required:

(1) "human being" means a person who has been born and is alive;

(2) "bodily injury" means physical pain, illness or any impairment of physical condition;

(3) "serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ;

(4) "deadly weapon" means any firearm, or other weapon, device, instrument, material or substance, whether animate or inanimate, which in the manner it is used or is intended to be used is known to be capable of producing death or serious bodily injury.

ARTICLE 213. SEXUAL OFFENSES

Section 213.0. Definitions

In this Article, the definitions given in Section 210.0 apply unless a different meaning plainly is required.

Section 213.1. Rape and Related Offenses

(1) *Rape.* A male who has sexual intercourse with a female not his wife is guilty of rape if:

(a) he compels her to submit by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or

(b) he has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(c) the female is unconscious; or

(d) the female is less than ten years old.

Rape is a felony of the second degree unless (i) in the course thereof the actor inflicts serious bodily injury upon anyone, or (ii) the victim was not a voluntary social companion of the actor upon the occasion of the crime and had not previously permitted him sexual liberties, in which cases the offense is a felony of the first degree. Sexual intercourse includes intercourse per os or per anum, with some penetration however slight; emission is not required.

(2) *Gross Sexual Imposition.* A male who has sexual intercourse with a female not his wife commits a felony of the third degree if:

(a) he compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution; or

(b) he knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct; or

(c) he knows that she is unaware that a sexual act is being committed upon her or that she submits because she falsely supposes that he is her husband.

Section 213.2. Deviate Sexual Intercourse by Force or Imposition

(1) *By Force or Its Equivalent.* A person who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, commits a felony of the second degree if:

(a) he compels the other person to participate by force or by threat of imminent death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone; or

(b) he has substantially impaired the other person's power to appraise or control his conduct, by administering or employing without the knowledge

of the other person drugs, intoxicants or other means for the purpose of preventing resistance; or

(c) the other person is unconscious; or

(d) the other person is less than 10 years old.

Deviate sexual intercourse means sexual intercourse per os or per anum between human beings who are not husband and wife, and any form of sexual intercourse with an animal.

(2) *By Other Imposition.* A person who engages in deviate sexual intercourse with another person, or who causes another to engage in deviate sexual intercourse, commits a felony of the third degree if:

(a) he compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution; or

(b) he knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct; or

(c) he knows that the other person submits because he is unaware that a sexual act is being committed upon him.

Section 213.3. Corruption of Minors and Seduction

(1) *Offense Defined.* A male who has sexual intercourse with a female not his wife, or any person who engages in deviate sexual intercourse or causes another to engage in deviate sexual intercourse, is guilty of an offense if:

(a) the other person is less than [16] years old and the actor is at least [4] years older than the other person; or

(b) the other person is less than 21 years old and the actor is his guardian or otherwise responsible for general supervision of his welfare; or

(c) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him; or

(d) the other person is a female who is induced to participate by a promise of marriage which the actor does not mean to perform.

(2) *Grading.* An offense under paragraph (a) of Subsection (1) is a felony of the third degree. Otherwise an offense under this section is a misdemeanor.

Section 213.4. Sexual Assault

A person who subjects another not his spouse to any sexual contact is guilty of sexual assault, a misdemeanor, if:

(1) he knows that the contact is offensive to the other person; or

(2) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct; or

(3) he knows that the other person is unaware that a sexual act is being committed; or

(4) the other person is less than 10 years old; or

(5) he has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the other's knowledge drugs, intoxicants or other means for the purpose of preventing resistance; or

(6) the other person is less than [16] years old and the actor is at least [four] years older than the other person; or

(7) the other person is less than 21 years old and the actor is his guardian or otherwise responsible for general supervision of his welfare; or

(8) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

Sexual contact is any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying sexual desire of either party.

Section 213.5. Indecent Exposure

A person commits a misdemeanor if, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm.

Section 213.6. Provisions Generally Applicable to Article 213

(1) *Mistake as to Age.* Whenever in this Article the criminality of conduct depends on a child's being below the age of 10, it is no defense that the actor did not know the child's age, or reasonably believed the child to be older than 10. When criminality depends on the child's being below a critical age other than 10, it is a defense for the actor to prove that he reasonably believed the child to be above the critical age.

(2) *Spouse Relationships.* Whenever in this Article the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation. Where the definition of an offense excludes conduct with a spouse or conduct by a woman, this shall not preclude conviction of a spouse or woman as accomplice in a sexual act which he or she causes another person, not within the exclusion, to perform.

(4) *Sexually Promiscuous Complainants.* It is a defense to prosecution under Section 213.3 and paragraphs (6), (7) and (8) of Section 213.4 for the actor to prove by a preponderance of the evidence that the alleged victim had, prior to the time of the offense charged, engaged promiscuously in sexual relations with others.

(5) *Prompt Complaint.* No prosecution may be instituted or maintained under this Article unless the alleged offense was brought to the notice of public authority within [3] months of its occurrence or, where the alleged victim was less than [16] years old or otherwise incompetent to make complaint, within [3] months after a parent, guardian or other competent person specifically interested in the victim learns of the offense.

(6) *Testimony of Complainants.* No person shall be convicted of any felony under this Article upon the uncorroborated testimony of the alleged victim. Corroboration may be circumstantial. In any prosecution before a jury for an offense under this Article, the jury shall be instructed to evaluate the testimony of a victim or com-

plaining witness with special care in view of the emotional involvement of the witness and the difficulty of determining the truth with respect to alleged sexual activities carried out in private.

ARTICLE 251. PUBLIC INDECENCY

Section 251.1. Open Lewdness

A person commits a petty misdemeanor if he does any lewd act which he knows is likely to be observed by others who would be affronted or alarmed.

Section 251.3. Loitering to Solicit Deviate Sexual Relations

A person is guilty of a petty misdemeanor if he loiters in or near any public place for the purpose of soliciting or being solicited to engage in deviate sexual relations.

DIVISION 15. CRIMES AGAINST PROPERTY

Chapter 1. Damage

Section 2800. Definitions

(1) "Property" means any form of real property or tangible personal property which is capable of being damaged or destroyed.

(2) "Habitable property" includes a building, ship, trailer, sleeping car, airplane, or other structure or vehicle adapted for the accommodation of persons.

(3) Property is that of another if anyone other than the actor has a possessory or proprietory interest in any portion thereof.

Section 2801. Aggravated Arson

A person is guilty of aggravated arson if he recklessly damages any habitable property by means of fire or explosives in conscious disregard of a substantial risk that at the time of such conduct a person or persons may be in such habitable property, whether or not a person is actually present.

Aggravated arson is a second degree felony.

Section 2802. Arson

A person is guilty of arson if under circumstances not amounting to aggravated arson he starts a fire or causes an explosion, whether on his own property or another's:

(1) with the intention of defrauding an insurer; or

(2) in reckless disregard of a risk that his conduct will damage or destroy the property of another.

Arson is a third degree felony.

Section 2803. Negligent Burning

A person is guilty of negligent burning if he:

(1) negligently starts a fire or causes an explosion, whether on his own property or another's, and thereby negligently endangers human life or negligently places

the property of another in danger of damage or destruction; or

(2) having started a fire, whether negligently or not, and knowing that its spread will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire, or fails to give a prompt fire alarm.

Negligent burning is a misdemeanor.

Section 2804. Criminal Mischief

A person commits criminal mischief if:

(1) under circumstances not amounting to arson he damages or destroys property with the intention of defrauding an insurer; or

(2) he intentionally tampers with the property of another and thereby

(a) recklessly endangers human life; or

(b) recklessly causes or threatens a substantial interruption or impairment of any public utility service; or

(3) he intentionally damages the property of another.

Section 2805. Grading of Criminal Mischief

(1) A violation of Section 2804(2) is a third degree felony,

(2) Any other violation of Section 2804 is a third degree felony if the actor's conduct causes or is intended to cause pecuniary loss in excess of [$5,000], a misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss in excess of [$100], and a petty misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss in excess of [$25]. Otherwise, criminal mischief is an infraction.

COMMENT

Chapter 1. Damage

In General. This chapter deals with criminal conduct involving damage to property. Such conduct runs the gamut from breaking a window through destroying a painting worth hundreds of thousands of dollars to causing or threatening harm to life and limb by using

a dangerous means, like fire or explosion, to damage a building. What is called for is a classification for sentencing purposes of property-damaging conduct on the basis of factors having a rational bearing on a judgment as to the social danger posed by the actor and his conduct.

Present California law is not based on such factors. The failure is especially notable in the provisions dealing with arson. As the California Law Revision Commission pointed out in 1957:

> Chapter 1 of Title 13 of the Penal Code (Sections 447a to 451a) is entitled "Arson." Section 447a makes the burning of a dwelling-house or a related building punishable by a prison sentence of two to twenty years. Section 448a makes the burning of any other building punishable by a prison sentence of one to ten years. Section 449a makes the burning of personal property, including a streetcar, railway car, ship, boat or other water craft, automobile or other motor vehicle, punishable by a sentence of one to three years. Thus, in general, California follows the historical approach in defining arson, in which the burning of a dwelling-house was made the most serious offense, presumably because a greater risk to human life was thought to be involved. Yet in modern times the burning of other buildings, such as a school, a theatre, or a church, or the burning of such personal property as a ship or a railway car often constitutes a far graver threat to human life than the burning of a dwelling-house. Some other states have, therefore, revised their arson laws to correlate the penalty not with the type of building or property burned but with the risk to human life and with the amount of property damage involved in a burning. A study should be made to determine whether California should similarly revise Chapter 1 of Title 13 of the Penal Code.

A study undertaken at the instance of the Law Revision Commission revealed in considerable detail the anomalies in present California law resulting in part from the overlap between Title 13, Chapter 1, as enacted in 1929, and other provisions of the Penal Code left un-

amended at that time, and in part from deficiencies inherent in Title 13, Chapter 1, itself.

The following examples, based on the law as it stood prior to the 1966 amendments, illustrate the problem:

(1) A burns an unoccupied house and receives a sentence of two to twenty years under *Section 447a.*

(2) B burns a school, endangering the lives of hundreds of children, and recives a sentence of one to ten years under *Section 448a.*

(3) C burns a ferry boat, endangering the lives of hundreds of passengers, and receives a sentence of one to three years under *Section 449a.*

(4) D burns a painting worth $100 to collect insurance and receives a sentence of one to five years under *Section 450a.*

(5) D burns a boat worth $20,000 to collect insurance and receives a sentence of one to five years under *Section 450a.*

(6) D burns the same boat as in example (5), but his motive is to injure the boat's owner, whom he dislikes. His sentence is one to three years under *Section 449a.*

(7) A sets fire to a pile of lumber. If he is convicted under *Section 449a,* he is sentenced to from one to three years' imprisonment. If he is convicted under *Section 600,* he is sentenced to from one to ten years' imprisonment.

(8) B sets fire to a field of hay, is indicted under *Section 449a,* and is acquitted because the hay was worth less than the $25 *de minimis* figure prescribed by that section. Had he been convicted, he would have been sentenced to from one to three years' imprisonment. If instead he is indicted under *Section 600.5* he may on the same facts be convicted, because that section has no *de minimis* limitation. And he is sentenced to imprisonment from one to ten years.

(9) C sets fire to his stock of merchandise to collect insurance on it. He is convicted under *Section 450a* and gets one to five years. If he is convicted under *Section 548,* as he may be on the same facts, he gets one to ten years.

A fresh start is clearly called for: one that attacks the grading problem in terms of (a) relevant harms, *i.e.,* the danger to human life and the extent of property damage and (b) the actor's culpability with respect to his percep-

tion of the risk that such harms might be caused by his conduct.

That fresh start is not provided by the 1966 amendments to Title 13, Chapter 1, passed primarily in response to what were thought to be deficiencies in existing law revealed by the Watts riot. Indeed, those amendments provide a particularly cogent instance of the pitfalls that inhere in piecemeal revision of penal legislation. One existing anomaly was remedied by raising the penalty under *Section 448a* from 1–10 years to 2–20 years to equate it with the penalty under *Section 447a,* thus eliminating the disparity disclosed by examples (1) and (2) above. At the same time other anomalies were not only preserved but enhanced by shifting *Sections 600* and *600.5* to Title 13, Chapter 1, renumbering them as *Sections 449b* and *449c,* respectively, but making no change in their penalty provisions. Thus, examples (7) and (8) remain true today, with the added absurdity that they now involve disparities between different subsections of the same section of the Code.

Other features of the 1966 amendments do not require discussion at this point because they relate either to general sentencing provisions or to the special problem of riot control, both of which will be treated elsewhere in this revised code.

Section 2800. Definitions

The definition of "property" is intended to be as all-inclusive as possible, eliminating the necessity for long strings of definitional examples. The definition of "habitable property" is designed exclusively for use in connection with the offense of aggravated arson, which defines the kind of incendiary property-damaging conduct that poses a substantial risk to human life. This definition sweeps away existing distinctions based on whether the property is a "dwelling," some other kind of "structure," or a "vehicle," focusing exclusively on whether such property is "adapted for the accommodation of persons, whether or not a person is actually present," the purpose being to confront directly the problem of risk to human life, which is the primary justification for singling out some forms of incendiary property damage for aggravated treatment. It is necessary to define "property of

another'' in order to identify the nature of the interest being protected by excluding, under some circumstances, one's own property. The intent is to keep the exclusion narrow so as to deprive an actor of this defense whenever anyone else, be it a spouse, a business partner, a tenant, or a mortgagee, is exposed to the risk of pecuniary loss.

Section 2801. Aggravated Arson

This offense is designed to deal with what is perceived as the gist of common-law arson: incendiary conduct carrying a high risk to human life. The principal difficulty in confronting the risk issue directly is that fire-setting always involves some risk to human life, either to fire-fighters or to bystanders who are drawn to the scene. It is because of the very broad potential liability thought to inhere in basing aggravated penalties directly on perceived risk to life that recent formulations, including the *Model Penal Code's (Proposed Official Draft Section 220.1)* (See Appendix.) and *New York's Revised Penal Law (Section 150.15),* (See Appendix.) have failed to confront the risk issue directly, but instead have made liability turn on objective factors.

This formulation bases liability expressly on the actor's perception of risk to life but limits the potential liability by narrowing the definition of the risk to one that *"at the time of such conduct* a person or persons may be *in* such habitable property. . . ." Consequently, the *risk* of injury to fire-fighters or spectators will not suffice to subject the actor to the enhanced penalty for aggravated arson. *Actual harm* to such person will, of course, constitute separate offenses under the revised code.

The culpability requirement for the offense is recklessness, both as to the incendiary conduct and as to the actor's perception of the risk to life. Thus, if a fire is started to defraud an insurer, the actor's conduct will be more or less severely punished depending on whether or not he recklessly endangered human life, rather than on such fortuitous factors as whether or not anyone happened to be inside.

The sole objective limitation is that the property affected must be "habitable property," thus excluding forest fires and other agricultural fires from the aggravated category. The reason for this exclusion is that in

the case of such fires it is impossible to limit the potential liability by defining the risk as we have done. If a forest fire is started at point X, and there is a risk that someone may be endangered at point Y, 50 miles away, we think it unwise to leave the assessment of the actor's recklessness to the hindsight of a jury, when indignation as to an actual result is likely to affect judgment as to the actor's perception of a probable result. It should also be kept in mind that if death or bodily injury actually occurs, separately punishable offenses may be charged.

Section 2802. Arson

Section 2802 defines a broad spectrum of criminal conduct that has as its common theme the use of fire or explosion in a way that recklessly causes or threatens substantial property damage.

Subsection (1) reaches conduct that has as its purpose defrauding an insurer. Since this kind of conduct is so common an instance of the kind of fire-setting that recklessly threatens substantial property damage, it seems appropriate to single it out for special treatment. Here, as elsewhere under Section 2802, the offense may be charged as aggravated arson (Section 2801) when there is evidence of reckless disregard of risk to life.

Subsection (2) is a residual category which deals directly with risk-creation in the sphere of substantial property damage. Under the culpability provisions of the revised code, Section 405(3), one who starts a fire with the *intention* of damaging or destroying another's property would also be guilty under this provision.

It should be noted that Section 2802 is extremely broad with respect to the property protected, covering as it does all forms of property—buildings, forests, crops, personal property—capable of being damaged or destroyed.

Section 2803. Negligent Burning

Statutes in some 36 states deal, in varying degrees of specificity, with the negligent use of fire. Most such statutes focus with great particularity on camp fires, forest fires, etc. One of the broadest formulations is that contained in *California Health and Safety Code Section 13000,* which provides:

> "Every person is guilty of a misdemeanor who allows a fire kindled or attended by him to escape from his control or to spread to the lands of any person other than the builder of the fire without using every reasonable and proper precaution to prevent the fire from escaping."

It is always open to question whether negligence, even as restrictively defined as it is in Section 404(4) of this revised code, should suffice for criminal liability. However, given the general recognition that exists in our society of the danger attendant on the use of fire or explosion and the desirability of promoting care in their use, the inclusion of an offense of negligent burning carrying misdemeanor penalties seems justified.

The statute distinguishes between negligence in starting a fire and negligence in controlling a fire. In the latter case, if the fire was not negligently set, the actor must "know" the risk involved in its spread before his failure to act will render him liable. This provision thus creates a special omissive liability that would not otherwise exist under the general position taken by this revised code on omissions as a basis for criminal liability. See Section 402. It is otherwise in the case of negligent fire-setting, under Subsection (1), where liability rests simply on culpable inadvertence as to the risk created by the negligent conduct.

Section 2804. Criminal Mischief

This section defines a wide variety of property-damaging conduct not characterized by dangerous means such as fire or explosion. The provision as to defrauding an insurer (Section 2804(1)) is necessary because ordinarily the offense consists of damaging the property "of another." The "tampering" concept in Section 2804(2) is designed to deal with a variety of situations, *e.g.,* throwing a power switch, placing an object on railroad tracks, or releasing the handbrake on another's car, in which the gist of the harm is not damage to the property immediately affected but rather the threat of ulterior harm. Section 2804(3) is a residual category covering all forms of intentional damage to the property of another.

Section 2805. Grading of Criminal Mischief

Section 2804 offenses are graded according to the pecuniary loss actually caused or intended to be caused by the actor's conduct, except for the highly restricted "tampering" offense defined by Section 2804(2), which is treated as a third-degree felony because of the extremely serious risks with which it deals and the demonstrated dangerousness of an actor who consciously creates such risks. The grading is provisional, as is indicated by the use of brackets, since it will have to be reconsidered in the light of decisions yet to be made about the grading of other offenses against property.

APPENDIX

MODEL PENAL CODE

Proposed Official Draft

Section 220.1. Arson and Related Offenses

(1) Arson. A person is guilty of arson, a felony of the second degree, if he starts a fire or causes an explosion with the purpose of:

(a) destroying a building or occupied structure of another; or

(b) destroying or damaging any property, whether his own or another's, to collect insurance for such loss. It shall be an affirmative defense to prosecution under this paragraph that the actor's conduct did not recklessly endanger any building or occupied structure of another or place any other person in danger of death or bodily injury.

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Section 150.15. Arson in the first degree

A person is guilty of arson in the first degree when he intentionally damages a building by starting a fire or causing an explosion, and when (a) another person is present in such building at the time, and (b) the defendant knows that fact or the circumstances are such as to render the presence of a person therein a reasonable possibility.

Arson in the first degree is a class B felony.

MEMORANDUM ON DEFAMATION

Criminal defamation provisions are based on two different rationales: protection of reputation and prevention of the breach of the peace which is likely to occur when the victim reacts to the defamation. Illinois provides (*Ill. Rev. Stats. 27–1*) that "a person commits criminal defamation when . . . he communicates . . . to any person matter which tends to provoke a breach of the peace." Injury to the reputation was expressly rejected as a basis for the provision. See Comments, p. 305. This also seems to be the basis for the California provision (*Penal Code Sections 248–260*). *People v. Crespi,* 115 Cal. 50 (1896). On the other hand, Minnesota (*40A Minn. Stats. Ann. Section 609.765*) is ambiguous as to its rationale, see Comments, p. 216, and Wisconsin (*Wisc. Stats. Ann. Section 942.01*) and Louisiana (*Section 14.47*) seem clearly to include injury to reputation as one basis.

Both New York and the Proposed Official Draft of the Model Penal Code omit criminal defamation provisions, although *Tentative Draft No. 13 of the Model Penal Code, Section 250.7, p. 41,* did contain one:

> "A person is guilty of a misdemeanor if, with purpose to foment hatred against [anyone or against] any racial, national, or religious group, or to intimidate, he publicly:
>
> (a) disseminates any derogatory falsehood, with knowledge of the falsity; or
>
> (b) suggests, recommends, justifies, or participates in any concerted unlawful action; or
>
> (c) makes indecent or abusive utterance, gesture, or display; or
>
> (d) participates in any demonstration, procession or gathering in disguise or to perform any intimidating act."

The principal arguments against inclusion of a defamation provision are the attrition of a need for one, the lack of reported cases and the Constitutional problems.

Whether there should be criminal penalties for injury to reputation is itself highly debatable. Moreover, the availability and utilization of the civil remedy has "substantially eroded the breach of peace justification for criminal libel laws." *Garrison v. State of Louisiana,* 379 U.S. 64, 69 (1964). See also Emerson, *Toward a General Theory of the First Amendment,* 72 Yale L. J. 877, 924 (1963).

The absence of reported appellate cases is also significant. The American Law Institute notes that there were only eleven criminal libel cases reported in the years 1946–1960. *Model Penal Code Tentative Draft No. 13,* at 44. Comparable statistics are developed in Leflar, *The Social Utility of the Criminal Law of Defamation,* 34 Tex. L. Rev. 984, 985 (1956). These show both a declining and a low incidence of reported cases. Research has uncovered a total of only seventeen criminal defamation appellate decisions in California, the last of which was some 16 years ago. *People v. Walker,* 93 Cal. App.2d 54, 208 P.2d 724 (1947).

Although not immediately relevant, *New York Times v. Sullivan,* 376 U.S. 254 (1964), and *Garrison v. Louisiana,* 379 U.S. 64 (1965), severely confine the operation of a criminal defamation statute, at least so far as public officials are concerned. The upshot of these decisions is that to withstand First Amendment attack, a criminal defamation statute must provide that the false utterance was made with knowledge of its falsity or in reckless disregard thereof. *Garrison v. Louisiana, supra,* at 74–75. The Supreme Court did note that different interests might be involved in purely private litigation, *id.* at 72 n. 8; see also *Rosenblatt v. Baer,* 86 S. Ct. 669, 676 n. 12 (1966). However, it is not clear whether these interests militate for or against the validity of such a provision. More importantly, practically all of the criminal defamation cases since 1946 have in fact involved public officials. *Model Penal Code Tentative Draft No. 13,* at 44.

This is not to say that there are not reasons to support retention. For one, the absence of appellate decisions does not imply an equal absence of prosecutions. The recent case involving Senator Kuchel is an instance of prosecution under Section 248, although the defendants who were convicted ultimately pleaded guilty to violation of *Penal*

Code Section 650-½ (outrage to public decency.) Further, Article I, 9 of the California Constitution provides:

> "In all criminal prosecutions for libels, the truth may be given in evidence to the jury, and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted."

This may imply some mandate that the Penal Code include a criminal provision, although the logic is certainly not inexorable.

A subsidiary problem is whether there should be a group libel provision. The American Law Institute drafted such a provision, *Model Penal Code Draft No. 13, Section 250.7,* although the Proposed Official Draft does not include one. Present case law suggests that such a provision would be Constitutional, *Beauharnais v. Illinois,* 343 U.S. 250 (1952), although there is substantial doubt whether that case is still good law. California does not now have such a provision.

It is therefore concluded that the proposed code should not contain a defamation provision.

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